

In The Matter Of:
*Karen DePaepe -vs-
City of South Bend and Pete Buttigieg, et al.*

*Gary Horvath
December 17, 2013*

*Midwest Reporting, Inc.
1448 Lincolnway East
South Bend, Indiana 46613*

<p style="text-align: right;">Page 0</p> <p style="text-align: center;">UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF INDIANA SOUTH BEND DIVISION</p> <p>KAREN DEPAEPE, Plaintiff, vs CITY OF SOUTH BEND and PETE BUTTIGIEG, Individually and in his official capacity as Mayor of the CITY OF SOUTH BEND, Defendants.</p> <p>-----</p> <p>The Deposition of GARY HORVATH</p> <p>Date: Tuesday, December 17, 2013</p> <p>Time: 9:07 a.m.</p> <p>Place: Baker & Daniels, LLP 202 South Michigan Street 1400 KeyBank Building South Bend, Indiana 46601</p> <p>Called as a witness by the Plaintiff in accordance with the Federal Rules of Civil Procedure for the United States District Court, Northern District of Indiana, South Bend Division, pursuant to Notice.</p> <p>Reported by Angela J. Galipeau, RPR, CSR Notary Public, State of Indiana MIDWEST REPORTING, INC. 1448 Lincolnway East South Bend, Indiana 46613</p>	<p style="text-align: right;">Page 3</p> <p style="text-align: center;">I N D E X THE DEPOSITION OF GARY HORVATH</p> <p>1 DIRECT EXAMINATION 2 By Mr. Duerring..... Page 4 3 4 * * * 5 E X H I B I T S 6 Exhibit 1..... Page 5 7 (208.00 The Services Division) 8 Exhibit 2..... Page 33 9 (Position Description, Director of Communications) 10 Exhibit 3..... Page 61 11 (Computer screen shot of e-mail from Ms. DePaepe to 12 Mr. Horvath) 13 * * * 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2 MR. SCOTT DUERRING 3 Duerring Law Offices 4 61191 U.S. 31 South 5 South Bend, Indiana 46614 6 (574) 968-0250</p> <p>7 For the Plaintiff;</p> <p>8 MR. EDWARD A. SULLIVAN, III 9 Faegre Baker Daniels, LLP 10 1400 Key Bank Building 11 202 South Michigan Street 12 South Bend, Indiana 46601 13 (574) 239-1930 14 edward.sullivan@faegreBD.com</p> <p>15 For the Defendants;</p> <p>16 ALSO PRESENT</p> <p>17 Ms. Karen DePaepe.</p> <p>18 * * *</p> <p>19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 GARY HORVATH 2 called as a witness by the Plaintiff, having first been 3 duly sworn, was examined and testified as follows:</p> <p>4 DIRECT EXAMINATION 5 BY MR. DUERRING: 6 Q. Can you tell us your name, please? 7 A. Gary Horvath. 8 Q. And, Mr. Horvath, you have had your deposition taken 9 before, correct, not only just recently in another related 10 case, but probably throughout your career as a law 11 enforcement officer; is that correct? 12 A. Yes, I have. 13 Q. And that's what we're here for today is an opportunity to 14 question you under oath. And one thing I'm going to ask 15 you is if I ask you a question that you don't understand, 16 just let me know and I'll be happy to rephrase it in a 17 fashion that you're able to understand. Is that okay? 18 A. Yes, sir. 19 Q. For the record, can you tell me where you're employed and 20 what your current rank is and current duties are? 21 A. I'm presently employed at the City of South Bend Police 22 Department. My present day rank is division chief, and 23 where I'm assigned is the services division. 24 Q. Now, you have provided just before we started today a 25 document which I'm going to have marked.</p>

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<p>1 (Exhibit 1 marked for identification.)</p> <p>2 Q. Which now has been marked as Exhibit 1. I'm going to ask</p> <p>3 you to take a look that exhibit, please. Let me know when</p> <p>4 you've had a chance to review it.</p> <p>5 You've had an opportunity to review Deposition</p> <p>6 Exhibit 1?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Okay. Now, can you tell me where that came from?</p> <p>9 A. It came from a file that was on my computer's hard drive,</p> <p>10 desktop, labeled "Duty Manual South Bend Police</p> <p>11 Department" yesterday.</p> <p>12 Q. Okay. So essentially it came from the duty manual of the</p> <p>13 South Bend Police Department, correct?</p> <p>14 A. That is correct.</p> <p>15 Q. Before we had computers, it would be in a binder</p> <p>16 somewhere?</p> <p>17 A. Or in stone.</p> <p>18 Q. And is that the current version of the South Bend Police</p> <p>19 Department's duty manual that this was derived from?</p> <p>20 A. It's the current duty manual version as of yesterday.</p> <p>21 Q. Okay. Just to backtrack a little bit, how long have you</p> <p>22 been employed with the South Bend Police Department?</p> <p>23 A. Approximately 34 years.</p> <p>24 Q. And I think you said your rank was captain or chief?</p> <p>25 A. Division chief.</p>	<p>1 MR. SULLIVAN: Objection, vague, mischaracterizes</p> <p>2 the record. You can answer to your best</p> <p>3 recollection.</p> <p>4 A. It was approximately six years ago. I'd have to sit down</p> <p>5 and actually count off the years.</p> <p>6 Q. Okay. So which chief actually was in office at the time</p> <p>7 you became division chief for services?</p> <p>8 A. That would have been Chief Boykins.</p> <p>9 Q. And do you know how long he had been in office?</p> <p>10 A. Just a matter of a month or two.</p> <p>11 Q. Do you know what the purpose was for combining the</p> <p>12 services division with the community relations division?</p> <p>13 A. He was attempting to cut back one division chief.</p> <p>14 Q. What were your duties as a division chief for community</p> <p>15 relations that would be different than the duties you have</p> <p>16 as chief of services?</p> <p>17 A. As chief of services, I no longer was responsible for</p> <p>18 crime prevention was one area. I'm not responsible for</p> <p>19 the Crime Stoppers program. I believe those are the two</p> <p>20 that I can think of right off the bat I'm not responsible</p> <p>21 for anymore.</p> <p>22 Q. Okay. Were there any duties that kind of coexisted with</p> <p>23 each division?</p> <p>24 A. Training, training is one. I can't remember whether I had</p> <p>25 computer services at that time or whether Chief Kilgore</p>
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<p>1 Q. How long have you been a division chief?</p> <p>2 A. Approximately 11 or 12 years.</p> <p>3 Q. And has it been the services division that you have been a</p> <p>4 chief of for that period of time?</p> <p>5 A. No, sir.</p> <p>6 Q. Can you tell me your, I guess, timeline with respect to</p> <p>7 when were you promoted to being a chief and what</p> <p>8 departments have you been the chief over, or divisions I</p> <p>9 suppose?</p> <p>10 A. Division chief initially was community relations, and that</p> <p>11 would be approximately 11, 12 years ago. And I believe it</p> <p>12 was February of -- I'm not exactly sure of the years. The</p> <p>13 year after Tom, Chief Fautz left and Darryl Boykins became</p> <p>14 chief, February of that year.</p> <p>15 And I'd have to go back in time approximately six</p> <p>16 years ago or so was when I became division chief in charge</p> <p>17 of both community relations and services. It was a</p> <p>18 merging of both divisions.</p> <p>19 Q. Who was the, if you know, who was the division chief for</p> <p>20 services prior to you?</p> <p>21 A. Richard Kilgore.</p> <p>22 Q. It's my understanding that Chief Fautz, former Chief Fautz</p> <p>23 left that position in and around 2007; and Darryl Boykins</p> <p>24 took over sometime either late of 2007, beginning of 2008.</p> <p>25 Does that sound about right to you?</p>	<p>1 had computer services at that time. That would be about</p> <p>2 the only one I can remember at this time.</p> <p>3 Q. Okay. Because I understand under Exhibit 1, one of the</p> <p>4 delineated duties would be training. Actually, there's a</p> <p>5 paragraph entitled "Training." You're saying that the</p> <p>6 former community relations division chief would also have</p> <p>7 training responsibilities?</p> <p>8 A. What's in our duty manual, what you have in front of you,</p> <p>9 Exhibit 1, Horvath Exhibit 1, is pretty old</p> <p>10 chronologically; and some of the information that's in</p> <p>11 this particular job description or duties is in error.</p> <p>12 Q. Well, let's go through that then. Which part -- which</p> <p>13 sections of Exhibit 1 are no longer relevant to how things</p> <p>14 are run at the South Bend Police Department?</p> <p>15 A. As of today or as of a particular time?</p> <p>16 Q. Let's talk about today, and then let's work our way back.</p> <p>17 A. Right off the bat, number one, promotional procedures.</p> <p>18 The South Bend Police Department/City of South Bend is a</p> <p>19 state of nature. There's no promotional procedure for the</p> <p>20 sworn and/or civilian personnel.</p> <p>21 Q. Where are you looking at specifically?</p> <p>22 A. Number 1, "Administration."</p> <p>23 Q. Okay. And say that for me again so I understand it.</p> <p>24 A. Okay. Services chief has no responsibility for</p> <p>25 promotional procedures within the South Bend Police</p>

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<p>1 Department. We're at what's called a state of nature.</p> <p>2 There's no -- officers electing to be promoted would file</p> <p>3 or submit an officer's report requesting consideration for</p> <p>4 a promotion or assignment to a particular unit or to a</p> <p>5 particular rank, and it would be up to the chief of police</p> <p>6 to fill that particular position.</p> <p>7 Q. Okay. And so essentially, the first sentence of that</p> <p>8 paragraph, number 1 under "Administration," I guess the</p> <p>9 first two sentences are no longer accurate; is that</p> <p>10 correct?</p> <p>11 A. I'd say the first three sentences most likely or more.</p> <p>12 Q. Okay. So you're no longer responsible for coordination</p> <p>13 and dissemination of all information relating to</p> <p>14 promotional procedures, correct?</p> <p>15 A. Correct.</p> <p>16 Q. You're no longer required to ensure the testing evaluation</p> <p>17 procedures and the actual promotions occur within the</p> <p>18 guidelines of existing promotional plans, correct?</p> <p>19 A. Correct.</p> <p>20 Q. You're no longer responsible to ensure that health and</p> <p>21 pension plans are in accord with current and existing</p> <p>22 statutory regulations?</p> <p>23 A. I have nothing to do with pension plans. I believe</p> <p>24 neither one of those we deal with.</p> <p>25 Q. Are you required to be concerned with any of those matters</p>	<p>1 armory and also the employees."</p> <p>2 A. Everything with the exception of all civilian employees.</p> <p>3 There are other civilian employees assigned to other</p> <p>4 divisions.</p> <p>5 Q. What civilian employees are currently assigned to your</p> <p>6 division that you would be responsible as a services</p> <p>7 chief?</p> <p>8 A. Right now I couldn't begin to tell you everybody's name.</p> <p>9 Q. Can you tell me their function?</p> <p>10 A. I could approximately, but civilians that would fall under</p> <p>11 the services division would include any civilians that are</p> <p>12 in training, records, communications. Did I say services</p> <p>13 already? Services.</p> <p>14 Q. What about the --</p> <p>15 A. There's one more, maintenance, motor pool.</p> <p>16 Q. Okay. Are you responsible for the supervision of the</p> <p>17 entire equipment inventory of the South Bend Police</p> <p>18 Department? Again, I'm quoting from a portion of the</p> <p>19 paragraph 1(B), or B(1).</p> <p>20 A. Yes. I would think -- it says sometimes the word</p> <p>21 "supervision." I guess more approximately it would be</p> <p>22 "oversee" in that there's at least in several cases many</p> <p>23 other layers of supervision underneath me that would</p> <p>24 actually do the direct day-to-day supervision. Oversee I</p> <p>25 think would be in some cases a better term.</p>
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<p>1 as it affects the morale of the police department, which</p> <p>2 is essentially the next sentence?</p> <p>3 A. As a superior officer in the department, that would be</p> <p>4 probably considered one of my responsibilities as any</p> <p>5 supervising officer would.</p> <p>6 Q. So as it relates to the services division chief, it's not</p> <p>7 other than what any other chief or supervisory person</p> <p>8 would have in the department; is that correct? Is that</p> <p>9 what you're saying?</p> <p>10 A. That I believe would be a correct characterization.</p> <p>11 Q. Is there also a requirement, the next sentence, "He will</p> <p>12 administer the payroll, all purchasing and financial</p> <p>13 matters of the department." Are you responsible for that</p> <p>14 currently?</p> <p>15 A. Yes.</p> <p>16 Q. Do you design and write federal grants as mentioned in the</p> <p>17 next section of that sentence?</p> <p>18 A. Per se I think you asked if I would be writing the federal</p> <p>19 grants. I have other people that would be doing it</p> <p>20 nowadays for me.</p> <p>21 Q. So you supervise those who would be writing the federal</p> <p>22 grants?</p> <p>23 A. That is correct.</p> <p>24 Q. Also, there's a mention in there, "The supervision of the</p> <p>25 entire equipment inventory, including the motor pool and</p>	<p>1 Q. Is there another description of the services division</p> <p>2 chief section of the duty manual that is more accurate</p> <p>3 than the one that has been provided today?</p> <p>4 A. Not that I was able to find in a word search.</p> <p>5 Q. Generally, how do you know that these are things that</p> <p>6 don't apply any longer? Is there like a memorandum, or</p> <p>7 was there any kind of interoffice document generated to</p> <p>8 say these areas of the duty manual are no longer accurate?</p> <p>9 A. Not to my knowledge.</p> <p>10 Q. Then how do you know that they don't apply to you anymore?</p> <p>11 A. Somewhat commonsense. Some are that we do not even</p> <p>12 perform these duties or are involved in any of these</p> <p>13 duties.</p> <p>14 Q. Are you aware of when the last time the duty manual has</p> <p>15 been revised?</p> <p>16 A. The duty manual is in a constant state of evolution. I</p> <p>17 believe the last document may have been within the last</p> <p>18 two months that we may have signed for.</p> <p>19 Q. Yet it appears it's still not up to date?</p> <p>20 MR. SULLIVAN: Objection, mischaracterizes. Go</p> <p>21 ahead.</p> <p>22 A. Would you rephrase the question?</p> <p>23 Q. Sure. You're apparently telling me as you testify here</p> <p>24 that this document, Exhibit 1, which you indicated you got</p> <p>25 from your computer yesterday, does not accurately reflect</p>

<p style="text-align: right;">Page 13</p> <p>1 what your current duties are as the services division 2 chief, correct? 3 A. The document I produced as of this morning contains both 4 old job description duties as well as current job 5 descriptions, kind of a blending of both. 6 Q. Okay. You indicated that the duty manual had been revised 7 within the last, I think, two months? 8 MR. SULLIVAN: Objection, mischaracterizes. Go 9 ahead. 10 A. I don't understand. 11 Q. When's the last time the duty manual was revised? 12 A. Within the last two months. 13 Q. Okay. And any reason why the revisions you're telling me 14 now is what was accurate to what you do wasn't placed in 15 the most recently revised duty manual? 16 A. This particular section of the duty manual was not 17 recently revised. 18 Q. Do you know when the last time Section 208.00 of the 19 services division of the duty manual was revised? 20 A. I have no idea. 21 Q. Do you know who would have been responsible for revising 22 that? 23 A. No, I don't. 24 Q. All right. We talked about 208.01 B(1). Now let's talk 25 about B(2), "Records." It says, "The Services Chief will</p>	<p style="text-align: right;">Page 15</p> <p>1 Q. Is there a difference in your mind between supervising the 2 front desk and overseeing? 3 A. Yes. 4 Q. What is the difference? 5 A. Supervise is usually a direct one on one with a certain 6 span of control. Oversee is more global in that I don't 7 stand up there and supervise, look at their use of 8 vacation time, sick time, work product, etc. 9 Q. And do you know when that changed between what is 10 delineated in Exhibit 1 and what apparently currently 11 exists now? 12 MR. SULLIVAN: Mischaracterizes. Go ahead. 13 A. Not exactly. I'm confused on what -- would you repeat the 14 question? 15 Q. Sure. Paragraph 3 on the second page, first portion of 16 that, it says, "Communications. The Services Chief will 17 supervise the front desk." 18 You just indicated that you oversee the front desk. 19 You do not supervise the front desk, further indicated 20 that you define overseeing the front desk as different 21 than supervising the front desk. 22 So my question was when did it change from 23 supervising the front desk to overseeing the front desk as 24 per your testimony? 25 MR. SULLIVAN: Same objection. I'm not sure he</p>
<p style="text-align: right;">Page 14</p> <p>1 be responsible for the updating and efficient performance 2 of the records section, which encompasses the laboratory, 3 data processing and the property clerk." 4 Do you still have that responsibility as described in 5 that paragraph I just read? 6 A. No. 7 Q. When did that responsibility extinguish? 8 A. Prior to myself becoming the services division chief. 9 Q. On page 2, again, we're going to go up to the top which 10 has paragraph 3, "Communications. The Services Chief will 11 supervise the front desk, standard operating procedures of 12 both police and fire departments in the communications 13 sections to ensure proper communications and operations." 14 Are you responsible as delineated in that paragraph? 15 A. The only part I'm not sure of is that we do not have a lot 16 to do with the fire department. The communications center 17 does dispatching for police, fire, and EMS. Standard 18 operating procedures or requests by the fire department, 19 they're responsible for their SOPs, and we implement them 20 through the communications center. 21 So we don't have -- we don't dictate SOP's of the 22 fire department. We just follow them as it relates to 23 dispatching their units. 24 Q. Okay. Do you supervise the front desk? 25 A. Yes. Oversee.</p>	<p style="text-align: right;">Page 16</p> <p>1 testified that it changed. That's his view of it. 2 You can answer. 3 A. Who had direct supervision of the front desk evolved and 4 changed several times over the years. At one time the 5 front desk used to be -- the personnel fell under the 6 uniform division. And this is all within the same time 7 that this particular document was in place. So at one 8 time it was the uniform division, then it went to the 9 communications section; and I believe it went to 10 communications within the last six years. 11 Q. When you became services chief, did you supervise the 12 front desk or did you oversee it? 13 A. Unfortunately I do not know when the front desk fell under 14 communications, when that particular change was made. But 15 there was a change probably within the last -- definitely 16 I know it was within the last six years that change had 17 taken place. 18 Q. Did you ever supervise the front desk as a services 19 division chief? 20 MR. SULLIVAN: Supervise in his understanding of 21 the word as he described it? 22 Q. Well, I guess what I'm trying to figure out is I'm taking 23 the language from Exhibit 1 which is from, as I understand 24 it, the duty manual. I'm not sure whether there's a 25 definitional section in the duty manual. So I suppose</p>

<p style="text-align: right;">Page 17</p> <p>1 I'll ask. Is there a definitional section in the duty 2 manual that would define the word supervise in a common 3 fashion so that we all would understand what this meant? 4 A. I really don't know, sir. I don't believe so. 5 Q. Well, I'm trying to get the division chief's, I guess, 6 understanding by the duty manual what he was supposed to 7 do and what he was expected to do. So whether his 8 definition of what supervised means corresponds with what 9 his actual obligations were, I guess we'll have to find 10 out. But I'm just using the word that was given to me in 11 the document, common ordinary meaning of it. 12 MR. SULLIVAN: That's fine. You guys just 13 discussed the meaning of that phrase, and I wanted to 14 know if you were using it in that sense or in another 15 sense. 16 MR. DUERRING: I am using it in the sense that it 17 is used in the duty manual. And if he doesn't know, 18 he can tell me. If he does, he can tell me that. 19 MR. SULLIVAN: Fair enough. I didn't mean to 20 distract you. 21 A. After you guys talked back and forth, I don't even know 22 what the question was. 23 BY MR. DUERRING: 24 Q. I'm not a hundred percent sure what the last question was 25 either, but let me ask this question: What I'm trying to</p>	<p style="text-align: right;">Page 19</p> <p>1 manage the front desk versus the desk sergeants who had a 2 more laissez-faire or hands-off approach versus one would 3 have through the communications section. So that was 4 changed. I believe it was within the six-year period. 5 Q. Okay. You've indicated again under the paragraph that SOP 6 of the fire departments is not something that the services 7 chief is involved in, correct? 8 A. We don't -- I don't really dictate SOP's of the fire 9 department. Communications section or communications 10 center -- there's some word I use. We just fulfill in our 11 dispatching duties those particular SOP's. 12 Q. Next paragraph 4, "Training. The Services Chief will 13 supervise, control and evaluate (in liaison with the city 14 personnel department and the promotion board) police 15 applicant screening and training and testing procedures of 16 recruits." Do you do that still? 17 A. Yes. 18 Q. You oversee the ongoing professionalization of members of 19 the department by in-service training and other 20 educational programs? 21 A. Yes. 22 Q. Is there anyone else that shares in that responsibility 23 that I just read? 24 A. There's going to be a whole training staff that's 25 involved.</p>
<p style="text-align: right;">Page 18</p> <p>1 find out is you have delineated a difference of what your 2 duties are because you defined your duty as being an 3 overseer of the front desk versus a supervisor of the 4 front desk. 5 I specifically asked you if there was a difference in 6 your mind and you said, yes, the language in the services 7 manual says -- or in the duty manual says, "The Services 8 Chief will supervise the front desk," which in your mind 9 is, from my understanding and correct me if I'm wrong, is 10 different than what you do, which is oversee the front 11 desk. 12 And what I'm trying to find out is when did that 13 obligation or duty change from supervision to oversight. 14 And then I think I also asked did you ever view your duty 15 to the front desk personnel different from the time you 16 took the job of chief of services until now? 17 A. As I mentioned, sometime within the last six years, it 18 went from -- front desk personnel went from, from what I 19 remember, went from the uniform division, the front desk 20 personnel -- correction, to the front desk sergeants would 21 supervise the public safety officers, the people that are 22 assigned to the front desk. 23 Under Karen DePaepe, she had a proposal that better 24 supervision could be garnered, more quality control could 25 be had by having communications supervisors supervise and</p>	<p style="text-align: right;">Page 20</p> <p>1 Q. And who oversees or supervises the training staff? Is 2 that within the services division? 3 A. Yes. 4 Q. Does that include both law enforcement employees and 5 civilian employees of the department? Do you know what I 6 mean by the difference there? 7 A. Yes. 8 Q. Sworn officers versus unsworn employees? 9 A. That particular sentence would be for both civilian and 10 sworn members. 11 Q. Okay. Second to last sentence, "He will maintain liaison 12 with other law enforcement agencies in matters of 13 personnel and training instruction." Is that still within 14 the bailiwick of the services chief? 15 A. Yes, sir. 16 Q. Final sentence, "He will supervise the training file of 17 recruits and ensure that all phases of training are 18 complete." Is that still within your bailiwick? 19 A. Again, as I mentioned before, as in many of the other 20 paragraphs, I'm not sure of the word supervise, which 21 means hands-on. Rarely do I have hands-on with any files. 22 I just have to ensure that the process is being done 23 through several other layers of personnel. 24 Q. Do those layers all exist within the services division? 25 A. Yes.</p>

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1 Q. Jumping down to paragraph 7, "Services Chief acts as
2 liaison between the police department and the personnel
3 department to ensure the prompt and efficient handling of
4 all personnel matters involving civilian employees of the
5 police department."
6 Is that still an accurate description of your duties
7 with respect to civilian employees?
8 A. Yes.
9 Q. It's my understanding that when Karen DePaepe was employed
10 as director of communications, she was considered a
11 civilian employee; is that correct?
12 A. That is correct.
13 Q. So she would be one of the employees referred to in
14 paragraph 7; is that correct?
15 A. That is correct.
16 Q. I'm going to ask some questions concerning the
17 communications department, or the communications center I
18 suppose. When I refer to the word "communications
19 center," do you understand what I mean?
20 A. Yes, sir.
21 Q. Okay. Can you describe to me what the communications
22 center consists of within the South Bend Police
23 Department?
24 A. The communications center is located on the far east side
25 of our building at 701 West Sample, approximately a 2,000

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1 square foot section of our 125,000 square foot footprint,
2 consisting of approximately 30 employees ranging from
3 director of communications to a public service officer
4 located at the front desk. Correction, 38 employees, I'm
5 sorry, approximately.
6 Q. Okay. And did this communications center as you just
7 described fall underneath the bailiwick of the services
8 division chief?
9 MR. SULLIVAN: I just have a need to object to
10 "bailiwick."
11 MR. DUERRING: I'm trying to use commonly known
12 words so we don't --
13 MR. SULLIVAN: You're reaching back with that
14 word. Go ahead.
15 A. I wouldn't say bailiwick. I'm not exactly sure what
16 bailiwick stands for.
17 BY MR. DUERRING:
18 Q. It falls within the responsibility of services division
19 chief?
20 A. Oversee responsibility, I would think both those terms
21 might be appropriate.
22 Q. And as I understand your definition of oversee, that does
23 not include supervise?
24 A. Not -- well, portions would be considered supervision.
25 Q. Portions. Okay. What portions of the communications

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1 center would be under the supervision of the services
2 division chief?
3 A. Supervision would be director of the communications
4 center.
5 Q. Oversight would be what, overseeing --
6 A. Probably the overall, more of a global view in that I
7 would not be supervising the day-to-day activities of all
8 the other employees.
9 Q. Are there any other division chiefs that would hold any
10 type of responsibility over the communications center?
11 A. No, sir.
12 Q. And this responsibility that we just talked about over the
13 communications center, did it exist from the time that you
14 took the position of division chief or services?
15 A. I believe the only change -- would you repeat the question
16 one more time real quick?
17 MR. DUERRING: Could you read it back?
18 (Read back.)
19 A. As mentioned earlier in this deposition, there was a
20 change sometime between the start and/or present day time
21 as the division chief overseeing the services division as
22 regards to the front desk personnel.
23 Q. Are the front desk personnel considered part of the
24 communications center?
25 A. They are now.

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1 Q. When did that change occur?
2 A. As I mentioned before, sometime in a six-year period.
3 Q. And that change was initiated by Karen DePaepe?
4 A. I believe she was the individual that was the champion of
5 that.
6 Q. Do you know if that would have been under the Chief
7 Boykins administration?
8 A. It would be.
9 Q. Any other changes that you can think of?
10 A. Not right offhand, sir.
11 Q. Now, at the time that you took the position of services
12 chief, what training program, if any, was in existence to
13 train the director of communications to do her job?
14 A. I'm sorry. Are you asking from the time I took over or
15 prior to?
16 Q. At the time when you took over the position of division
17 chief of services, what training program or programs
18 existed to help train and, I guess, continue to train the
19 director of communications or whoever held that position?
20 A. Prior to me becoming division chief of services, you'd
21 have to ask Division Chief Richard Kilgore as to what type
22 of training program was in place or that he initiated as
23 regards to the director of communications training.
24 Once I took over, she was encouraged to go to any
25 type of conferences, whether it was state conferences, or

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1 any type of APCO conference, or anything she felt
2 necessary to increase her knowledge and perform her
3 duties.
4 Q. And how was that encouragement communicated to the person
5 who held that position?
6 A. Several ways. Number one, approving schools that she may
7 have gone to, conferences. And, you know, encouragement
8 in that I was one of many different layers for approval
9 for any conference and/or schooling.
10 And as far as I remember, I never turned down any
11 conference. And it appears, from what I remember at
12 least, one to two times a year she would go to some type
13 of professional training.
14 Q. Were there records kept of the training, any kind of
15 training that was initiated or taken advantage of by the
16 director of communications?
17 A. There probably is, at least as it relates to the retention
18 basis for the South Bend Police Department. So it could
19 be three years. It could be purged after three years.
20 But any type of documentation as it pertains to dollars
21 and cents, financial records and schools that she may have
22 put in for, we probably have at least three years.
23 Q. Do you know whether or not those records would have been
24 placed in her personnel file?
25 A. I don't believe they would be placed in her personnel

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1 file.
2 Q. Did you maintain a file that would have kept this
3 information for this particular position?
4 A. I personally wouldn't have maintained a file on that.
5 Q. Would you have supervised or overseen anyone who would
6 have maintained that file?
7 A. As I mentioned earlier in this deposition, there would be
8 a financial record as to tuition or registration paid,
9 dollars -- travel expenses, those types of things, and the
10 travel request form where Karen would have actually
11 requested that certain type of training.
12 Q. Okay. Aside from the particular person holding that
13 position requesting the permission to attend, I guess, an
14 outside conference, were there any in-department programs
15 that were specifically for the ongoing professionalization
16 and education of the director of communications?
17 A. Yes.
18 Q. Can you describe what those programs were?
19 A. There are several programs, whether they were just one-day
20 conferences or just half-day, that she would attend that
21 was locally within the state, and as is directly related
22 to her job, whether it was dealing with IDACS, emergency
23 communications, emergency management, etc.
24 But I believe we also as a department invested just
25 under \$10,000 in a professional executive leadership

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1 program that she attended.
2 Q. Okay. Well, using IDACS as kind of an example, IDACS --
3 do you know what IDACS stands for?
4 A. I believe it's either Indiana something -- not exactly a
5 hundred percent sure. I'm sure if I sat around and
6 thought about it I'd get it right, or Google it.
7 Q. What is IDACS? Can you explain what it is?
8 A. It deals with integrated data on the statewide level
9 administered through state agencies pushing out
10 information on a state and national basis for wants,
11 warrants, criminal histories, etc.
12 Q. And would you agree with me that the IDACS has a certain
13 number of specific protocols dealing with how the
14 information is to be used and who has access to that
15 information?
16 A. There is several -- there's an ever evolving group of
17 regulations, rules, etc., that is involving IDACS and the
18 dissemination of information.
19 Q. That are very specific, correct, as to that program; would
20 you agree with me?
21 MR. SULLIVAN: Objection, vague. Go ahead.
22 A. Very detailed, I would say.
23 Q. And would the training that would be given for the IDACS
24 use be essentially sponsored by the agencies that oversee
25 IDACS?

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1 A. Was that a question? I'm sorry.
2 Q. Yes. Would the training that would be relative to the use
3 of the IDACS program through the South Bend Police
4 Department as administered by the director of
5 communications, would that training be something generally
6 through the agency that regulates IDACS?
7 A. Yes.
8 Q. And would that be the Indiana State Police?
9 A. Yes.
10 Q. So the South Bend Police Department then wouldn't have
11 anything to do with that training. It would be
12 administered by the State Police, correct?
13 A. The State Police would administer -- well, they would
14 administer training to an IDACS coordinator within the
15 department. And someone, in most cases within the
16 department, would do the training of our personnel.
17 Q. Who was the IDACS coordinator?
18 A. Karen DePaepe.
19 Q. Now, specifically you're aware that the department, South
20 Bend Police Department -- when I say "department," I'm
21 meaning the South Bend Police Department, okay. The
22 department had a piece of equipment called the Dynamic
23 Reliant recording system. Are you aware of that?
24 A. I'm not a hundred percent sure if it was called that, but
25 I do know we had -- I believe it was Dynamic Instruments,

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<p>1 maybe Reliant was the name of the model recording system.</p> <p>2 Q. Okay. And to your understanding, what did that system do?</p> <p>3 A. Recorded analog, voice, radio, phone conversations,</p> <p>4 transmissions in and out of the communications center, and</p> <p>5 other lines within the South Bend Police Department.</p> <p>6 Q. Okay. And at the time you took the position of services</p> <p>7 chief, do you know what the department's policy was with</p> <p>8 respect to the use of that recording system?</p> <p>9 MR. SULLIVAN: Objection, vague. Go ahead.</p> <p>10 A. I guess if it deals with what my interpretation of the</p> <p>11 policy if there was a written policy -- I'm not sure</p> <p>12 exactly your definition of "policy."</p> <p>13 Q. Okay. Well, I want to make sure you understand what I'm</p> <p>14 asking. So let me approach it from this particular</p> <p>15 standpoint:</p> <p>16 The recording system that we were talking about, what</p> <p>17 department did that fall under with respect to overseeing,</p> <p>18 maintaining and using?</p> <p>19 A. It would be the police department.</p> <p>20 Q. Okay. What section of the police department?</p> <p>21 A. Communications.</p> <p>22 Q. So that would fall under the services chief's</p> <p>23 responsibility as we've talked about, correct?</p> <p>24 A. I guess it would all depend on -- I guess it would fall</p> <p>25 within the services chief's responsibility or oversight,</p>	<p>1 responsibilities did you as services chief have over that</p> <p>2 system?</p> <p>3 A. As I mentioned before, dealing with paying the yearly</p> <p>4 maintenance, which is an accounts payable budgetary item,</p> <p>5 being informed of the fact if there was a malfunction and</p> <p>6 that Steven Campbell & Associates was involved in some</p> <p>7 sort of repair, in planning on the budgetary replacement</p> <p>8 of a system that may be starting to age, something to do</p> <p>9 with the five-year plan for capital expenditures in the</p> <p>10 future, and probably any type of -- at least on the</p> <p>11 oversight part, and not a day-to-day supervisory part, but</p> <p>12 an oversight of a FOIA type request, subpoenas, etc., were</p> <p>13 filled in a timely manner.</p> <p>14 Q. Any other duties that you had as far as this particular</p> <p>15 piece of equipment?</p> <p>16 A. Not that I remember off the top of my head.</p> <p>17 Q. Who was responsible for developing the policy that's used</p> <p>18 in the training of how it was to be used within the</p> <p>19 department?</p> <p>20 A. Training on its use would have been direct training from</p> <p>21 Steven Campbell & Associates with the administrator of the</p> <p>22 system. Policy and use would be dictated through various</p> <p>23 forms and policies of the duty manual and other directives</p> <p>24 that could and would have come from the chief of police.</p> <p>25 Q. As services division chief, did you oversee the training</p>
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<p>1 either when I was services chief or prior to.</p> <p>2 Q. Who had direct responsibility of the recording system?</p> <p>3 A. It would be the director of communications.</p> <p>4 Q. And she answered to you, or that person answered to you,</p> <p>5 correct, as I understand it?</p> <p>6 A. I guess as it relates to the recording system or in</p> <p>7 relationship to overall everyday duties?</p> <p>8 Q. As it relates to how you answered the question about 15</p> <p>9 minutes ago when you said you had direct supervision over</p> <p>10 the director of communications.</p> <p>11 A. As direct supervision of the director of communications,</p> <p>12 in that particular context, yes, but not with the</p> <p>13 recording system.</p> <p>14 Q. Who would have oversight of that or supervision of that</p> <p>15 system?</p> <p>16 A. It would have been the chief of police, I believe.</p> <p>17 Q. And what leads you to that belief?</p> <p>18 A. The only time I was involved in the Dynamic Instrument</p> <p>19 Reliant system is if the bills had to be paid for a</p> <p>20 maintenance agreement, or when Karen would tell me that</p> <p>21 usually post date as to any type of equipment malfunction</p> <p>22 took place involving the activation of our maintenance</p> <p>23 agreement.</p> <p>24 Q. So let's go through the specifics then. As it relates to</p> <p>25 the recording system that we've been talking about, what</p>	<p>1 of the director of communications and any part of her use</p> <p>2 of the recording system?</p> <p>3 MR. SULLIVAN: Objection, compound. Go ahead.</p> <p>4 A. I guess it's two different questions that you just asked.</p> <p>5 Her training, yes.</p> <p>6 As I mentioned before, her encouragement to attend</p> <p>7 professional training, approving professional training</p> <p>8 throughout the years; and the second part was the use</p> <p>9 would have been a direct training from Steven Campbell &</p> <p>10 Associates in its use.</p> <p>11 Q. Let me ask that again because I don't believe it was</p> <p>12 compound.</p> <p>13 Did you oversee any training or professionalization</p> <p>14 for the director of communications as it relates</p> <p>15 specifically to the use of the recording system that we've</p> <p>16 been talking about? That's one question.</p> <p>17 A. I believe that the training and its use, I was not</p> <p>18 involved in. I believe it was purchased under Chief</p> <p>19 Richard Kilgore.</p> <p>20 Q. It's my understanding that the system that was in place at</p> <p>21 the time Karen was terminated, or immediately prior to</p> <p>22 Karen being terminated, was purchased sometime in 2004.</p> <p>23 And you would have been responsible for procuring or</p> <p>24 approving the purchase of that equipment in 2004; is that</p> <p>25 correct or is that incorrect?</p>

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1 A. That is incorrect.
2 Q. And you're saying Chief Kilgore would have been
3 responsible for purchasing the equipment in 2004?
4 A. That is correct.
5 MR. SULLIVAN: Let's take a break.
6 (Recess taken.)
7 (Exhibit 2 marked for identification.)
8 BY MR. DUERRING:
9 Q. Just so I don't forget, Chief Horvath, I'm going to show
10 you what's been marked for identification purposes as
11 Exhibit 2. And can you take a look at Exhibit 2 for me?
12 Have you had occasion to review Exhibit 2?
13 A. Yes, sir.
14 Q. Are you familiar with that exhibit?
15 A. I believe I've seen it as it relates to the rewriting of
16 director of communications' recent job description that
17 was produced somewhere in 2012.
18 Q. Now, do you know whether or not Exhibit 2 represents the
19 rewritten description or the former description?
20 A. It would be the former description.
21 Q. Do you know whether or not Exhibit 2 accurately describes
22 the position of director of communications at the time
23 that Karen DePaepe held that position?
24 A. No, sir, not right now I don't.
25 Q. Okay. Do you know if there was any position description

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1 for the director of communications that would apply during
2 the period of time that Karen DePaepe held that position?
3 A. Not right now I don't.
4 Q. Exhibit 2 indicates that the supervisor or the director of
5 communications would be the services division chief; is
6 that correct?
7 A. That is correct.
8 Q. Is that what your understanding was while you were
9 services division chief at the time that Karen DePaepe
10 held that position?
11 A. I can't be a hundred percent sure due to the fact that
12 this document is at least 13 years old or more.
13 Q. Maybe you didn't understand my question.
14 At the time that you were services division chief,
15 and Karen DePaepe held the position of director of
16 communications, did this description apply as it relates
17 to you being her supervisor?
18 A. As I mentioned, as of right now I do not know. And the
19 reason why I say that is it could always be one that
20 supercedes this during her tenure as director of
21 communications.
22 The only way I would know that is if I would have a
23 document search done through HR services division if there
24 was any other documents out there.
25 Q. Were you the supervisor of the director of communications

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1 while Karen DePaepe held that position and you were
2 services division chief --
3 A. Yes.
4 Q. While you were Karen DePaepe's supervisor as services
5 division chief, were there any other primary job functions
6 other than those that are listed in Exhibit 2 that you are
7 aware of?
8 A. I believe what you have in front of you, this position
9 description almost makes it look like it's a job position
10 or description as it relates to almost like applying for
11 the position of director of communications versus all of
12 the duties and responsibilities that Karen had when the
13 two of us worked together.
14 Q. Are you aware of any other document or documentation that
15 would describe the duties and responsibilities of director
16 of communications, other than Exhibit 2, that would apply
17 while Karen DePaepe worked as director of communications?
18 A. As I mentioned, not without a search of the records to
19 determine whether there was any other document out there.
20 Q. Was Karen DePaepe as director of communications
21 responsible for insuring that all physical resources
22 housed and used within the department, within the
23 communications center were repaired and properly
24 functioning? And that's a paraphrasing of the last
25 paragraph on the first page of that document.

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1 A. It was her duties to report and, I guess, request the
2 repair of malfunctions within the communications center.
3 The actual physical repairing would most likely be
4 somebody else's responsibility.
5 Q. Let me ask this question then this way: I'm going to read
6 the bottom paragraph of Exhibit 2. It says, "Manages and
7 maintains all physical resources housed and used within
8 the communications center to ensure that all subordinates
9 are probably equipped and equipment failures are properly
10 identified, repaired, and restored to full operations."
11 Was it the director of communications' responsibility
12 to do that while you were services division chief and
13 Karen DePaepe held that position?
14 A. It was her responsibility to I would say manage the
15 repair, but not do the actual repair.
16 Q. Was it her responsibility to ensure that after the repair
17 was done, the equipment was operating properly?
18 A. Yes.
19 Q. Now, the Dynamic Instrument recording system that we
20 talked about before our break, you said that you were not
21 responsible for its purchase?
22 A. That is correct.
23 Q. Were you involved in any part of its planning and/or
24 selection?
25 A. Yes.

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<p>1 Q. What involvement did you have?</p> <p>2 A. Mainly working with Karen DePaepe as to the various</p> <p>3 functions -- the various functionalities of the system, as</p> <p>4 well as redundancy that was required to having such a</p> <p>5 system that's -- would be used in the communications</p> <p>6 center at 701 West Sample.</p> <p>7 Q. Okay. I'm going to back up a little bit. Did you ever</p> <p>8 hold the position of captain of planning and research?</p> <p>9 A. Yes.</p> <p>10 Q. Would that be under Darrell Gunn's tenure of chief of</p> <p>11 police?</p> <p>12 A. Not only under Darrell Gunn, but other individuals.</p> <p>13 Q. While you held that position, were you assigned to</p> <p>14 research and purchase -- research to purchase and</p> <p>15 implementation of an audio recorder to replace the</p> <p>16 Dictaphone reel-to-reel system?</p> <p>17 A. I believe I may have assisted back in those days.</p> <p>18 Q. Okay. And when I'm referring to the Dictaphone</p> <p>19 reel-to-reel system, were you familiar with that system?</p> <p>20 A. I know what it looks like. I wasn't familiar in its</p> <p>21 operation. I did know what the machine and the media,</p> <p>22 storage media that it was involved in.</p> <p>23 Q. And is it accurate to describe that system as basically</p> <p>24 the system that was being used by the department to record</p> <p>25 dispatches and telephone conversations prior to the</p>	<p>1 participation in purchasing that system.</p> <p>2 MR. SULLIVAN: What timeframe?</p> <p>3 MR. DUERRING: He indicated he was involved in</p> <p>4 the purchase of the Dynamic Reliant recording system,</p> <p>5 as far as researching it.</p> <p>6 MR. SULLIVAN: But he wasn't services chief at</p> <p>7 that time.</p> <p>8 MR. DUERRING: I understand. So the answer is</p> <p>9 either yes or no at the time.</p> <p>10 MR. SULLIVAN: That's what I'm trying to -- at</p> <p>11 the time it was purchased?</p> <p>12 MR. DUERRING: At the time it was purchased.</p> <p>13 MR. SULLIVAN: Go ahead.</p> <p>14 THE WITNESS: As I mentioned earlier, I cannot</p> <p>15 remember whether we had another piece of equipment,</p> <p>16 you know, during that process. I really just don't</p> <p>17 remember whether we had another piece of equipment</p> <p>18 between the old reel-to-reel system and the</p> <p>19 present-day system.</p> <p>20 MR. SULLIVAN: I think his question was did you</p> <p>21 provide any training at the time that system was</p> <p>22 bought.</p> <p>23 A. I believe -- as far as I know, that actual purchase wasn't</p> <p>24 by me. It was by Chief Kilgore was the approving body. I</p> <p>25 don't believe -- and I don't remember. I really don't</p>
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<p>1 purchase of the Dynamic Instrument system?</p> <p>2 A. Unfortunately I'm not a hundred percent sure. I keep</p> <p>3 thinking -- again, it's been a long time ago. I thought</p> <p>4 we had another system in between the DI and the old reel</p> <p>5 to reel. But unfortunately I don't remember. It's been a</p> <p>6 long time ago.</p> <p>7 Q. So you're saying you don't know what the Dictaphone</p> <p>8 reel-to-reel system did?</p> <p>9 A. Yes, I do know what it did.</p> <p>10 Q. What did it do?</p> <p>11 A. It recorded exactly what you had mentioned earlier, but</p> <p>12 whether there was a -- we went from a reel to reel right</p> <p>13 to the Dynamic Instrument without any intermediary, I</p> <p>14 don't remember if we had another piece of equipment</p> <p>15 between the two.</p> <p>16 Q. Okay. As part of your research, did you look into any</p> <p>17 federal/state laws regarding compliance with recording of</p> <p>18 telephone conversations?</p> <p>19 A. I don't believe I did.</p> <p>20 Q. When you oversaw the implementation of the Dynamic</p> <p>21 Instrument Reliant recording system, did you provide any</p> <p>22 training with respect to federal/state laws pertaining to</p> <p>23 the recording of telephone conversations?</p> <p>24 MR. SULLIVAN: Did he provide any training?</p> <p>25 MR. DUERRING: As services chief or any type of</p>	<p>1 believe I had that much to do with the actual installation</p> <p>2 and/or training of this particular item that had to do</p> <p>3 mainly with the spec'ing, assisting in spec'ing out the</p> <p>4 item or the equipment. But the installation was done</p> <p>5 through a combination of Steven Campbell and with Karen</p> <p>6 DePaepe.</p> <p>7 BY MR. DUERRING:</p> <p>8 Q. Okay. When you were involved in the process of having</p> <p>9 that system installed, purchased and installed by the</p> <p>10 department -- the system I'm referring to is the Dynamic</p> <p>11 Reliant system. Did you --</p> <p>12 Were you aware of whether or not there was any</p> <p>13 training with regards to making sure that system was in</p> <p>14 compliance with any federal/state laws regarding</p> <p>15 intercepting telephone conversations?</p> <p>16 A. I was not involved with any aspect of that.</p> <p>17 Q. Was there, to your knowledge, any discussion that you were</p> <p>18 aware of concerning that aspect of the recording system</p> <p>19 and its use?</p> <p>20 A. I have no knowledge of that particular aspect.</p> <p>21 Q. Do you have any training within -- with respect to</p> <p>22 federal/state laws regarding the interception of telephone</p> <p>23 conversations?</p> <p>24 A. The only thing that I had knowledge of is what I had been</p> <p>25 dealing with on a -- I wouldn't call it a day-to-day</p>

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<p>1 basis, but my training as it related to my prior position 2 in the police department before becoming lieutenant of 3 research and planning, then captain of research and 4 planning. 5 I had worked in the narcotics section of the South 6 Bend Police Department, detective division, or 7 investigative division, and there I received some training 8 as it relates to pen registers and federal and state law. 9 Q. Did that training give you any kind of information or 10 knowledge that there were regulations both federal and 11 state pertaining to the electronic interception of 12 telephone conversations? 13 MR. SULLIVAN: Objection, calls for a legal 14 conclusion. Go ahead. 15 A. The training that I received, which is in excess of 20 16 years ago at least, dealt with the fact that pen registers 17 were to be treated vastly different than wiretaps or 18 intercept of voice communications, and that voice 19 communications through phone lines was primarily done by 20 federal authorities with court orders and/or state 21 agencies in conjunction with federal investigations. 22 Q. So as I understand it, your knowledge with respect to what 23 you refer to as wiretaps or interception of voice 24 communications was that in order to have that 25 accomplished, there has to be some kind of warrant</p>	<p>1 system to intercept telephone conversations? 2 A. It was my understanding that the Dynamic Instrument 3 recording system housed within the communications center, 4 that particular system would be used for evidentiary 5 purposes, with subpoena requests from places such as the 6 prosecutor's office. It could be used for quality 7 control. It could be used for fulfilling FOIA, Freedom of 8 Information requests, and for training purposes. 9 Q. In what respects could it be used for quality control? 10 MR. SULLIVAN: I'm objecting to the extent any of 11 these call for a legal conclusion. I have no 12 objection to you asking him what people did and how 13 they did it. But sometimes it veers into asking sort 14 of about what was the law. And I don't think that's 15 what you want. So I'm being cautious in objecting to 16 the extent that it calls for a legal conclusion. You 17 can go ahead and answer. 18 A. As it relates to quality assurance is that there has to be 19 -- a certain percentage of the medical calls that are 20 furnished through the communications center has to be 21 reviewed and take a look at to make sure the quality 22 assurance and the correct protocols are performed. 23 Could be used for -- to make sure that the personnel 24 is appropriately following the rules and regulations and 25 giving good quality dispatch. It could also be used as a</p>
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<p>1 obtained; is that correct or incorrect? 2 MR. SULLIVAN: Would you repeat that? 3 (Read back.) 4 MR. SULLIVAN: Objection, mischaracterizes, calls 5 for a legal conclusion, confusing. You can answer. 6 A. I would believe that if the wiretap as I described was to 7 be used in a criminal investigation based on some type of 8 affidavit filed through a court system. That's how I 9 would interpret the training I had. 10 BY MR. DUERRING: 11 Q. At the time that you were involved in the research and 12 implementation -- I'm having trouble with that word 13 today -- of the system that was used to replace the 14 Dictaphone reel-to-reel system, what was your 15 understanding of how a department, if any, of how a 16 department could use such a system in recording telephone 17 conversations? 18 MR. SULLIVAN: Object that it calls for any kind 19 of legal conclusion. You can answer. 20 Q. Let me clarify. What was your understanding, based upon 21 the training you talked about that you had as a narcotics 22 officer and any other training that you might have gotten 23 as a law enforcement officer and any other experience that 24 you had as a law enforcement officer up to that time with 25 respect to how a department could use such a recording</p>	<p>1 means to make sure that new hires are performing to the 2 expectations of how the supervisor, you know, dictates as 3 part of the training regimen. That was just on one 4 aspect. It could be for the quality control. 5 Q. And how though from a logistical standpoint could that be 6 accomplished with this system? 7 A. That the supervisor -- whether it's the training officer, 8 assistant director or director could go and listen to how 9 various phone conversations are handled within their 10 supervisory role, span of control. 11 Q. So basically you're saying that the director -- and you're 12 referring to the director of communications -- could 13 access the recording of an intercepted conversation and 14 listen to that conversation to ensure that the police 15 personnel or the department personnel were handling a call 16 correctly; is that correct? 17 MR. SULLIVAN: Objection, mischaracterizes, 18 vague, overly broad. Go ahead. 19 MR. DUERRING: Let go back because I don't want 20 to mischaracterize, I don't want to be vague, and I 21 don't want to be overly broad. 22 Go back to his answer before that last question. 23 (Read back.) 24 MR. DUERRING: Okay. And then my question after 25 that was?</p>

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<p>1 (Read back.)</p> <p>2 MR. SULLIVAN: Same objection. You can answer.</p> <p>3 A. That would be correct.</p> <p>4 BY MR. DUERRING:</p> <p>5 Q. And as far as you understood, that wouldn't violate any of</p> <p>6 the federal and state laws that you were aware of with</p> <p>7 respect to wiretapping or recording voice communications;</p> <p>8 is that correct?</p> <p>9 MR. SULLIVAN: Objection, calls for a legal</p> <p>10 conclusion. Go ahead.</p> <p>11 A. As far as I, you know, as far as I understand, that was</p> <p>12 within a manager's, supervisor or director's authority</p> <p>13 based on the fact that all personnel within the</p> <p>14 communications center were fully aware that all phone</p> <p>15 lines, with the exception of one in the communications</p> <p>16 center, was being taped, which would be pursuant to</p> <p>17 regulations and procedures that were in place and written</p> <p>18 down.</p> <p>19 But also, they had the one party rule, that at least</p> <p>20 one party knows that this phone conversation is being done</p> <p>21 or taped.</p> <p>22 Q. So you're saying that there is a written document</p> <p>23 somewhere that sets out that -- that sets out the</p> <p>24 requirement that -- or the information that these phone</p> <p>25 lines are recorded so that everyone within a particular</p>	<p>1 communications department that were placed on a recording</p> <p>2 system prior to becoming chief of services?</p> <p>3 A. Yes.</p> <p>4 Q. And prior to becoming chief of services, what lines were</p> <p>5 you aware of that were placed on the recording system that</p> <p>6 were outside of the communications department?</p> <p>7 A. I only knew of a portion of the lines, and it was mainly</p> <p>8 for what was told to me. And the lines that I knew of</p> <p>9 would have been the front desk, and that would be the only</p> <p>10 one I know a hundred percent positively would have been</p> <p>11 the front desk.</p> <p>12 Q. Did you ever become aware of any of the division chiefs'</p> <p>13 lines being placed on the recording system?</p> <p>14 MR. SULLIVAN: Objection, vague as to timeframe.</p> <p>15 A. Depending on what timeframe you're talking about. What</p> <p>16 lines are recorded and what lines weren't recorded was</p> <p>17 ever evolving, so I really don't know at what time you're</p> <p>18 talking about.</p> <p>19 Q. Well, the timeframe I said was did you ever become aware</p> <p>20 of it. So let me -- is there something about that you did</p> <p>21 not understand?</p> <p>22 A. I didn't know whether it was as to what function or where</p> <p>23 during the timeframe between I guess the --</p> <p>24 Q. The timeframe would have been from the day that you became</p> <p>25 a law enforcement officer with the South Bend Police</p>
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<p>1 department knows that their line is being recorded?</p> <p>2 A. I believe it's within the training of all new</p> <p>3 communications center hires as part of the training</p> <p>4 process. And I've been told that everyone from day one</p> <p>5 within the communications center has been instructed and</p> <p>6 trained that all lines other than the break room line</p> <p>7 within the center is taped.</p> <p>8 Q. Is that in a document anywhere?</p> <p>9 A. Unfortunately I don't know right now.</p> <p>10 Q. So are you telling me that the only lines that were placed</p> <p>11 that you knew that were placed on the recording system</p> <p>12 were lines into the communications department?</p> <p>13 MR. SULLIVAN: Objection, mischaracterizes.</p> <p>14 A. No, I didn't say that.</p> <p>15 Q. Were you aware of what phone lines were placed on the</p> <p>16 Dynamic Instruments recording system outside of the</p> <p>17 communications department at any point in time while you</p> <p>18 were involved in the research or assisting in the purchase</p> <p>19 of this particular piece of equipment?</p> <p>20 A. Unfortunately, that long ago, I don't know. The actual --</p> <p>21 what lines were to be recorded and not recorded was not</p> <p>22 part of my decision making or I was not part of what line</p> <p>23 is to be recorded and which one wasn't during the initial</p> <p>24 design and configuration.</p> <p>25 Q. Were you aware that there were phone lines outside of the</p>	<p>1 Department until April of 2012. Did you ever become aware</p> <p>2 that any of the division chiefs' lines were placed or ever</p> <p>3 placed on a recording system?</p> <p>4 A. I believe back under Chief Thomas Fautz, there was a</p> <p>5 discussion as to -- it was in a conference room sometime</p> <p>6 in the morning. Correction. I don't know what time of</p> <p>7 the day. It was one time during his time as chief that</p> <p>8 there was a discussion as to what division chiefs' lines</p> <p>9 were to be recorded and not recorded.</p> <p>10 Q. Okay. Were you a part of that discussion?</p> <p>11 A. Yes.</p> <p>12 Q. Who else was a part of that discussion, to your</p> <p>13 recollection?</p> <p>14 A. I believe -- well, the chief, myself, Richard Kilgore,</p> <p>15 seems like Division Chief Eugene Kyle was there, and</p> <p>16 unfortunately I just don't remember the division chief for</p> <p>17 uniform, who it was exactly at that time or whether he was</p> <p>18 there. But it was all the division chiefs and the chief</p> <p>19 of police were involved in this conversation.</p> <p>20 Q. Do you know Jim Hassig?</p> <p>21 A. Yes.</p> <p>22 Q. Would that be who you would be referring to?</p> <p>23 A. I really don't know. There were several people that held</p> <p>24 that job for about a two-year period.</p> <p>25 Q. You think Eugene Kyle was there, but you're not sure?</p>

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1 A. I'm pretty sure he was there.
2 Q. Was Steve Richmond there?
3 A. No.
4 Q. As a result of this meeting, what happened with respect to
5 the issue of whether or not division chiefs' lines were
6 going to be placed on a recording system?
7 A. It appeared to me that Chief Fautz was having a
8 conversation with all the division chiefs and asking the
9 division chiefs if they wanted their lines taped or not
10 taped for a variety of reasons, such as administrative,
11 personnel problems, handling complaints, etc.
12 Q. Okay. I understand that. But what was the result of that
13 conference?
14 A. The result was that --
15 MR. SULLIVAN: Just objection, lack of
16 foundation; but you can go ahead and answer.
17 Q. Again, answer only if you know.
18 A. The only thing -- the final outcome, I don't know what the
19 final outcome was. The only thing I do know is that I was
20 asked if I wanted my line taped, and I said no, or at
21 least gave a no answer that I wanted it taped.
22 I do remember at one time the conversation that Gene
23 Kyle had mentioned it would be okay if his line was taped,
24 but I don't know whether it was or wasn't.
25 I really don't know what the answer of the uniform

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1 division chief, whether his ultimately became taped or not
2 and/or Richard Kilgore. There could have been
3 conversations afterwards. All I can be sure of is that
4 Gene Kyle had no problem with his line being taped, and I
5 saw no need for mine to be taped.
6 Q. And you're talking about what Gene Kyle said or didn't say
7 is based upon your recollection, correct?
8 A. Yes.
9 Q. And at that time you were -- what was your position?
10 A. Division chief community relations.
11 Q. Were there any other lines aside from the front desk lines
12 that you had personal knowledge that were placed on a
13 recording system at the time that you became division
14 chief of services?
15 A. Personal knowledge, no.
16 Q. Did you at any time know whether or not the telephone line
17 or lines assigned to the records clerk or records division
18 was ever placed on the recording system?
19 A. Sometime in either 2011 or 2012 I was made aware that the
20 answering point of the records clerk was placed -- was on
21 the system.
22 Q. How did you become aware?
23 A. In a document showing the lines that were presently being
24 taped through the DI system.
25 Q. So is it safe to say or accurate to say that you weren't

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1 aware or you didn't have any personal knowledge of how
2 those lines became placed on the recording system or the
3 circumstances under which those lines were placed on the
4 recording system?
5 MR. SULLIVAN: Compound. Go ahead.
6 A. What lines were taped, what lines were ultimately taped
7 was -- always told to me was between an agreement or
8 arrangement between the director of communications and the
9 chief of police. And we weren't involved in that
10 particular -- what lines were taped and which ones
11 weren't.
12 Q. So even though you were the supervisor of the director of
13 communications, you had no participation within which the
14 line was placed on that recording system?
15 A. I'd been told by the director of communications on more
16 than one occasion which line was taped and which ones
17 weren't was always between the chief of police and her.
18 And whether I as the division chief of services or my
19 predecessor, that it was -- that's how it was and how it
20 was to be.
21 Q. In your understanding of the situation, did the director
22 of communications have authority to place a line on a
23 recording system without any other intervention or any
24 other direction?
25 MR. SULLIVAN: Objection, calls for a legal

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1 conclusion. Go ahead.
2 A. Would you say that again? I must have missed a word.
3 MR. DUERRING: Would you read that back?
4 (Read back.)
5 A. Intervention and direction, intervention could mean a
6 physical intervention. Could Karen DePaepe physically do
7 it? I don't know if she had the ability to be able to
8 physically do it herself. Direction, could she have
9 actually done it without being directed by someone, I
10 really don't know what her skill level is in being able to
11 do it.
12 Only thing that I had always been told was that it
13 was the chief of police who had sole responsibility to
14 determine what lines were to be recorded and not recorded.
15 And that was mainly my understanding from Chief Fautz
16 through the one conversation that we had as well as
17 conversations I had with Karen DePaepe.
18 Q. To your knowledge, is that anywhere described in writing?
19 MR. SULLIVAN: Objection, vague. Go ahead.
20 A. I have no idea, unless there's something that's -- any
21 type of directive between the chief of police and the
22 director of communications.
23 Q. Prior to Karen DePaepe's termination, did you ever have
24 occasion to request that she listen to any recorded phone
25 conversations that had been intercepted by the recording

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<p>1 system?</p> <p>2 A. I'm sorry. Could you say that --</p> <p>3 (Read back.)</p> <p>4 A. I'm sure for disciplinary, whether I asked for anything</p> <p>5 that relates to quality control or a complaint by a</p> <p>6 uniform officer or any type of instance, I'm sure during</p> <p>7 those four years her and I had conversations about to look</p> <p>8 at -- investigate a complaint, etc.</p> <p>9 If I hadn't, for sure there would have been several,</p> <p>10 probably hundreds of subpoenas and FOIA requests that came</p> <p>11 through, requests to pull things off the DI system.</p> <p>12 Q. Well, let's just talk about your involvement in such a</p> <p>13 process. You said that probably over the number of years</p> <p>14 that you and Karen worked together, there were instances</p> <p>15 where you did that, where you asked that she listen to</p> <p>16 intercepted phone conversations in response to a</p> <p>17 complaint.</p> <p>18 A. That would be correct.</p> <p>19 Q. Okay. Do you recall whether or not any of those instances</p> <p>20 had been referred to the Office of Professional Standards?</p> <p>21 A. As of right now I do not know if any of them reached that</p> <p>22 level.</p> <p>23 Q. Do you recall whether or not there was any documentation</p> <p>24 that would have been generated to document such a process?</p> <p>25 A. There's a variety of forms that one would fill out to be</p>	<p>1 Q. Do you ever recall around that period of time asking Diane</p> <p>2 Gish to have Karen DePaepe listen to intercepted calls</p> <p>3 that would have come in on the records clerk phone line?</p> <p>4 A. As of -- while we sit here X number of years ago, I'm</p> <p>5 sorry, I just don't remember.</p> <p>6 Q. Did you know that the records clerk phone line, the phone</p> <p>7 line assigned to the records clerk's office was on the</p> <p>8 recording system sometime around October/November of 2011?</p> <p>9 A. Yes.</p> <p>10 Q. Do you know who the records clerk was at that time?</p> <p>11 A. No, I have no idea who you're talking about.</p> <p>12 Q. So it's safe to say that you would not have known whether</p> <p>13 or not that record clerk consented to having that phone</p> <p>14 line on the recording system?</p> <p>15 A. Again, like as I mentioned to you already, doesn't ring a</p> <p>16 bell at all. I just don't remember anything regarding an</p> <p>17 investigation of a records clerk or the pulling of that</p> <p>18 phone line.</p> <p>19 Q. Do you know Karen Yauck?</p> <p>20 A. Yes.</p> <p>21 Q. She was a records clerk?</p> <p>22 A. Either records clerk or data entry.</p> <p>23 Q. Do you ever remember being involved in a citizen's</p> <p>24 complaint concerning Karen Yauck?</p> <p>25 A. As we sit here right now, doesn't ring a bell.</p>
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<p>1 able to request the removal of taped conversations and/or</p> <p>2 officers' reports that may be involved.</p> <p>3 Q. Do you recall whether or not you executed or filled out</p> <p>4 any of those forms in any of these situations that you</p> <p>5 would request this to occur?</p> <p>6 A. I don't believe that I was involved in filling out the</p> <p>7 official documentation. If Karen and I were involved in</p> <p>8 any type of complaint, it usually would be she would bring</p> <p>9 it to me. If there was a complaint, I would have her</p> <p>10 document it in conjunction with an officer's report; and</p> <p>11 she would furnish a DVD or cassette on that particular</p> <p>12 complaint and what she had found out.</p> <p>13 Q. Would you obtain a subpoena for her to furnish that</p> <p>14 recorded conversation?</p> <p>15 A. No, never.</p> <p>16 Q. Would you obtain a court order in order to do that?</p> <p>17 A. No, never.</p> <p>18 Q. And would this involve any conversations on phone lines</p> <p>19 that were outside of the communications department?</p> <p>20 A. Not that I remember.</p> <p>21 Q. I direct your attention to sometime between I think it</p> <p>22 would be October/November of 2011. Did you have occasion</p> <p>23 to become aware of a citizen's complaint that involved the</p> <p>24 records clerk for the department?</p> <p>25 A. Unfortunately at this time I don't remember.</p>	<p>1 Q. And you don't recall asking Diane Gish to have Karen</p> <p>2 DePaepe listen to intercepted phone calls on the line</p> <p>3 assigned to Karen Yauck?</p> <p>4 A. Not that I remember.</p> <p>5 Q. And you don't recall signing a disciplinary report or</p> <p>6 disciplinary form that subsequently disciplined Karen</p> <p>7 Yauck for what the intercepted phone conversations</p> <p>8 revealed?</p> <p>9 A. Not that I remember.</p> <p>10 Q. Do you know or did you know whether or not Karen Yauck</p> <p>11 consented to having the line assigned to her placed on a</p> <p>12 recording system?</p> <p>13 MR. SULLIVAN: Objection, asked and answered. Go</p> <p>14 ahead.</p> <p>15 A. I really don't know whether Karen Yauck's phone line was</p> <p>16 on the recording system.</p> <p>17 Q. Did you prepare any written policy or operating guidelines</p> <p>18 to the communications center personnel regarding the usage</p> <p>19 of the recording system?</p> <p>20 A. No.</p> <p>21 Q. As director of communications, was Karen DePaepe</p> <p>22 authorized full access to the recording system?</p> <p>23 MR. SULLIVAN: Objection, calls for a legal</p> <p>24 conclusion. Go ahead.</p> <p>25 A. As it pertains to her duties.</p>

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<p>1 Q. So that's a yes, as it pertains to her duties?</p> <p>2 MR. SULLIVAN: Objection, asked and answered. He</p> <p>3 gave you the answer. Go ahead.</p> <p>4 A. As it pertains to her duties, she had the authority as it</p> <p>5 related to her duties to access and use the recording</p> <p>6 system.</p> <p>7 Q. As services division chief, did you ever provide Karen</p> <p>8 DePaepe with any written policy regarding the usage of the</p> <p>9 recording system?</p> <p>10 A. No.</p> <p>11 Q. As services division chief, did you take any steps to</p> <p>12 ensure that the director of communications was using the</p> <p>13 recording system in compliance with federal and state</p> <p>14 laws?</p> <p>15 A. As me myself as services chief, no.</p> <p>16 Q. Did you or were you aware of what the capacity of this</p> <p>17 recording system was with respect to how many lines it</p> <p>18 could record at any one time?</p> <p>19 A. I believe it was somewhere in the neighborhood of a</p> <p>20 maximum of 48 total phone and/or radio circuits.</p> <p>21 Q. Do you know how many incoming phone lines to the</p> <p>22 department were in existence at the time that this system</p> <p>23 was implemented?</p> <p>24 A. No. It would be a number in the hundreds.</p> <p>25 Q. So apparently in no way was this recording system</p>	<p>1 correct, from the system to the phone line?</p> <p>2 A. Back in that time -- there's two different ways. It was</p> <p>3 an evolution. It changed when we rewired our building or</p> <p>4 renovated our building.</p> <p>5 But basically, it's a copper line. When it gets to</p> <p>6 the copper analog line, it actually gets to the punchdown</p> <p>7 block, approximately a foot or two feet away from the</p> <p>8 recording system.</p> <p>9 Again, like I said, phone lines as well as radio</p> <p>10 circuits are analog lines also that go to the punchdown</p> <p>11 block. At certain times it could be digital as it relates</p> <p>12 to radio, but always analog as it relates to phone.</p> <p>13 Q. Okay. Let me ask it this way: Did you ever participate</p> <p>14 in the process whereby a particular phone line was added</p> <p>15 to the recording system?</p> <p>16 A. No.</p> <p>17 Q. Did you ever witness such a process occurring?</p> <p>18 A. No.</p> <p>19 Q. Did you ever speak to anyone at any time who was familiar</p> <p>20 with that process?</p> <p>21 A. The only thing I remember was that Barb Holleman, the</p> <p>22 chief's administrative assistant, had mentioned that she</p> <p>23 was, I guess, the only person that could be involved in</p> <p>24 changing lines under the direction of the chief of police.</p> <p>25 And so whether as to what lines or when a line got</p>
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<p>1 purchased to ensure the recording of all phone lines</p> <p>2 coming into the department; is that correct?</p> <p>3 A. That is correct.</p> <p>4 Q. Mechanically do you know how the system -- maybe</p> <p>5 mechanically isn't the right word to use these days.</p> <p>6 Logistically do you know how the system, in fact, acquired</p> <p>7 and stored telephone conversations?</p> <p>8 A. Vaguely now. I used to know it a lot better during its</p> <p>9 inception. There are copper lines that go to a punchdown</p> <p>10 block in close proximity to the system. Lines come from a</p> <p>11 variety of sources, whether it's console, whether it's</p> <p>12 from central electronics bank, whether it's from various</p> <p>13 circuits or switches in the wire rooms, communications</p> <p>14 rooms that go to a particular punchdown block in close</p> <p>15 proximity to the Dynamic Instrument recorder and DVD</p> <p>16 recorder.</p> <p>17 These various circuits, lines go into the system.</p> <p>18 There's a redundant recording for failsafe backup hard</p> <p>19 drives, and there's capabilities of burning DVDs for</p> <p>20 archival storage as well as for evidentiary purposes off</p> <p>21 the hard drives.</p> <p>22 Q. Okay. So as I understand it, to describe what I</p> <p>23 understand you to have said, and tell me whether it's</p> <p>24 correct or not, in order for a particular phone line to be</p> <p>25 placed on a recording system, it had to be hardwired,</p>	<p>1 changed or how a line got changed, it was pretty much</p> <p>2 hands-off to anyone and everyone other than the chief's</p> <p>3 office and the director of communications.</p> <p>4 Q. Okay. Let me be a little more specific on this question.</p> <p>5 Regardless of how it got hooked up to the system, is it</p> <p>6 your understanding that if a phone line was being recorded</p> <p>7 by the system, that conversation that it intercepted was</p> <p>8 first stored on a hard drive and then subsequently</p> <p>9 downloaded to a compact disk for long-term storage? Do</p> <p>10 you have any knowledge about that process?</p> <p>11 A. That process would be hard drive to either a cassette or</p> <p>12 to a DVD. I know there are some limitations in the</p> <p>13 system, and I can't tell you exactly where phone</p> <p>14 conversations via analog lines could go to -- could only</p> <p>15 go to a cassette.</p> <p>16 I really don't know whether they could become a wave</p> <p>17 file and be converted to digital media. I don't know what</p> <p>18 the limitations were.</p> <p>19 Q. Would it be accurate to say that Karen DePaepe would</p> <p>20 probably be the expert on that process?</p> <p>21 MR. SULLIVAN: Just object to the word "expert,"</p> <p>22 if there's any legal conclusion. Go ahead.</p> <p>23 A. At that particular time, she would be the most</p> <p>24 knowledgeable about the system.</p> <p>25 Q. Was it your understanding that once a phone line was</p>

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1 placed on a Reliant recording system that the recording
2 system would record 24 hours a day, 7 days a week, 365
3 days a year any noise that occurred on that phone line?
4 A. I'm not sure -- I think the noise would be based on a
5 certain type of threshold, so...
6 Q. Let me correct that. Any conversation that would have
7 occurred on that phone line would have been recorded 24
8 hours a day, 7 days a week, 365 days a year?
9 A. Any conversation that was detectable, I would think that
10 would be an accurate statement. And I have to --
11 MR. SULLIVAN: Let's take a break.
12 MR. DUERRING: Absolutely.
13 (Recess taken.)
14 (Exhibit 3 marked for identification.)
15 (Read back.)
16 BY MR. DUERRING:
17 Q. Were you aware of any -- I'm going to use the word
18 warnings -- of any kind of warnings or notations being
19 placed on phone lines that had been placed on the
20 recording system?
21 MR. SULLIVAN: Objection, vague. Go ahead.
22 A. I'm not sure how I could get a warning. Something like an
23 alarm or --
24 Q. Let me ask you this: If a phone line was on the recording
25 system and you were using it, did it beep which would

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1 indicate to someone that the phone -- that the
2 conversation was being recorded?
3 A. Is that what you mean? I completely took it as some other
4 means. I don't believe there's any type of auditory
5 beeps.
6 Q. Is there any kind of light that would flash or indicator
7 that would flash on the phone itself that would indicate
8 to the user that the conversation was being recorded?
9 A. Not to my knowledge.
10 Q. Was there any kind of sticky note placed on the phone or
11 label placed on a phone that was attached to a recorded
12 line that would warn the user that any conversations on
13 that phone would be recorded?
14 A. Not to my knowledge.
15 Q. Is it your understanding based upon -- basing this on
16 earlier discussions we've had on the record here that
17 phone lines outside of the communications department would
18 only be recorded upon the consent of the person assigned
19 to that phone line?
20 A. I didn't say that.
21 Q. Okay. What did you say regarding that issue?
22 A. I said any phone lines outside of the communications
23 center would have been through an agreement with the chief
24 of police and director of communications.
25 Q. Okay. To your knowledge, was there any participation of

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1 any other individuals with respect to that process?
2 MR. SULLIVAN: Objection, vague, no foundation or
3 personal knowledge. You can answer.
4 MR. DUERRING: That's why I framed it within his
5 knowledge.
6 A. No. I really have no knowledge as to what lines were
7 taped unless it was through someone mentioning it to me in
8 passing so to speak or in that one meeting with Chief
9 Fautz and other division chiefs.
10 BY MR. DUERRING:
11 Q. Have you ever received any training or instruction on what
12 has been referred to as the law enforcement exception of
13 the Federal Wiretap Act?
14 A. No.
15 Q. Have you ever heard of that exception before me just
16 mentioning that today?
17 MR. SULLIVAN: Objection to the extent it calls
18 for a legal conclusion or invades the attorney/client
19 privilege. And I'd instruct the witness not to
20 answer to anything he may have learned in
21 communications with counsel.
22 MR. DUERRING: I asked him if he ever heard of
23 that phrase. That's a yes or no answer. I didn't
24 ask him where he got it from, and you've already
25 instructed him not to answer.

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1 MR. SULLIVAN: All right. To the extent it
2 reveals the content of privileged communications.
3 A. I'm not real sure what the phrase even means.
4 BY MR. DUERRING:
5 Q. Okay. Fair enough.
6 A. Or how you use it and how I understand it, I'm sorry.
7 Q. Well, I'm not using it other than to ask you have you ever
8 heard of that phrase or do you have any understanding of
9 what that -- have you ever heard of that phrase before?
10 A. I've heard the word "exception." How it's being used, I'm
11 not real sure it's how I may have ever heard it.
12 Q. Have you heard that word exception in the context of the
13 Federal Wiretap Act?
14 A. In what timeframe?
15 Q. Between the time that you became a law enforcement officer
16 and the time that Karen DePaepe was discharged in April of
17 2011 -- '12.
18 A. Only as to, again, your definition of the word exception
19 and what I believe it could be, it would have only been --
20 MR. SULLIVAN: Hold on. Have you ever heard the
21 phrase?
22 Q. You're making this too complicated, Chief.
23 A. I guess, if anything, self-taught during that timeframe.
24 I may have looked up something. Whether they used the
25 word exception or non-exception, just my own studies so to

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<p>1 speak.</p> <p>2 Q. And so understanding this is your own studies, what have</p> <p>3 your own studies revealed to you with respect to the use</p> <p>4 of that word as it relates to the Federal Wiretap Act?</p> <p>5 MR. SULLIVAN: Object to the extent it calls for</p> <p>6 a legal conclusion. Go ahead.</p> <p>7 A. Again, what you're considering the word exception, what I</p> <p>8 thought it could be, exception would be that law</p> <p>9 enforcement agencies for a variety of reasons could, and</p> <p>10 depending on state law, record certain lines,</p> <p>11 conversations for certain reasons in its normal, everyday</p> <p>12 course of performing its function.</p> <p>13 Q. Is it safe to say, Chief, that if you would have thought</p> <p>14 that the department's use of the recording system violated</p> <p>15 the Federal Wiretap Act, that you would have advised</p> <p>16 someone of that fact? And I'm talking right now, say,</p> <p>17 prior to December 31, 2011.</p> <p>18 MR. SULLIVAN: Objection, calls for a legal</p> <p>19 conclusion, improper hypothetical. Go ahead.</p> <p>20 A. If I knew that there was any type of violation, either of</p> <p>21 our duty manual, state or federal law, it would have been</p> <p>22 my duty to inform a combination of my superior or</p> <p>23 supervisor as well as the corporate counsel, legal or city</p> <p>24 attorney, as to the fact that such violation was being</p> <p>25 performed.</p>	<p>1 the top of the little black window?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Can you read that?</p> <p>4 A. Yes.</p> <p>5 Q. And then it has a line that has "file," "edit," "view,"</p> <p>6 "actions," "tools," "window," "help." Do you see that? I</p> <p>7 think they commonly refer to that as part of the toolbar.</p> <p>8 A. I believe I can read some of it.</p> <p>9 Q. Okay. What part?</p> <p>10 A. I think it says -- it may say "view," but it's awful hard</p> <p>11 to read.</p> <p>12 Q. And then there's the next line that I see the word</p> <p>13 "close," and I can read "forward" I think are the two</p> <p>14 words. Can you read close and forward on the third line?</p> <p>15 A. There's some of that. Then there's another word that's</p> <p>16 completely obliterated.</p> <p>17 Q. Okay. Can you read close?</p> <p>18 A. Yes.</p> <p>19 Q. Can you read forward?</p> <p>20 A. Yes.</p> <p>21 Q. The next line it has some words. Can you read those</p> <p>22 words?</p> <p>23 A. Yes.</p> <p>24 Q. "Mail," "properties," and "personalize," correct?</p> <p>25 A. I think that's what that last word could be.</p>
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<p>1 Q. Did you ever do so?</p> <p>2 MR. SULLIVAN: Objection to the extent it calls</p> <p>3 for him to reveal any communications he had with</p> <p>4 legal counsel for the city.</p> <p>5 MR. DUERRING: I'm talking about prior to</p> <p>6 December 31, 2011.</p> <p>7 MR. SULLIVAN: That's what I'm talking about.</p> <p>8 You can answer to the extent you don't reveal any</p> <p>9 communications you may have had with the city</p> <p>10 attorney's office.</p> <p>11 A. Prior to December 31, 2011, I have no knowledge of any</p> <p>12 violation or knew that a violation was taking place.</p> <p>13 BY MR. DUERRING:</p> <p>14 Q. Chief, I'm going to show you what's been marked as Exhibit</p> <p>15 3. I understand that it is somewhat difficult to read.</p> <p>16 But with my eyes, if I can read it, anybody can read it.</p> <p>17 If you could review Exhibit 3, and if you could let me</p> <p>18 know when you're complete with that review.</p> <p>19 A. I guess I'm finished trying to review it.</p> <p>20 Q. Okay. Well, do you need more time?</p> <p>21 A. No. I just can't read the first page, a lot of it.</p> <p>22 Q. Well, let me go through that and see if we can decipher</p> <p>23 it. What part -- let me start from the little black</p> <p>24 window here.</p> <p>25 Do you see where it says "mail" from Karen DePaepe on</p>	<p>1 Q. Okay. And then there's the next line that says, "From:</p> <p>2 Karen DePaepe." Can you read that?</p> <p>3 A. I can't read the word "Karen," but I can definitely read</p> <p>4 "DePaepe."</p> <p>5 Q. Okay. Were there any other DePaepe's in the department?</p> <p>6 A. Not that I know of.</p> <p>7 Q. And then on that same line it goes over to the right.</p> <p>8 There's a date, 8-29-2011, 11:47 a.m. Do you read that?</p> <p>9 A. No.</p> <p>10 Q. Is there any part you can read of that?</p> <p>11 A. I can't read the 8.</p> <p>12 Q. Okay. The next line says "to." Can you read your name?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And the next line it says, "Subject: Forward</p> <p>15 ballpark figures for a new recording system." Can you</p> <p>16 read that?</p> <p>17 A. Yes.</p> <p>18 Q. Getting down into what I think we refer to as the body of</p> <p>19 it, can you read the word "Chief"?</p> <p>20 A. There's another line above that I can't read. Something</p> <p>21 about "ball" something "recording system." There's</p> <p>22 another part it looks like "attachments." I can't read</p> <p>23 all that one.</p> <p>24 Q. You're talking about on the subject line?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 69</p> <p>1 Q. On the right-hand side?</p> <p>2 A. I can't read all of that.</p> <p>3 Q. "Forward ballpark proposals or figures for a new recording</p> <p>4 system."</p> <p>5 A. If that's what you say it says, I don't know.</p> <p>6 Q. Okay. Well, below that then does it say "Chief"?</p> <p>7 A. Yes.</p> <p>8 Q. And below that, "These are the figures Dennis from" --</p> <p>9 MR. SULLIVAN: "These were."</p> <p>10 Q. "These were the figures Dennis from Nice Systems sent me</p> <p>11 in the attached e-mail. Also attached are the recorded</p> <p>12 audio lines, Karen." Can you read that?</p> <p>13 A. Yes, I believe I can make that out.</p> <p>14 Q. Okay. And then way down on the bottom, apparently under</p> <p>15 this system there's a notation of what is attached. It</p> <p>16 says "message," then it says, "Ballpark figures for..."</p> <p>17 Then it says, "Recorded audio L..." Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. This appears to be an e-mail from Karen DePaepe to you.</p> <p>20 Would you agree with that or disagree with that?</p> <p>21 A. I would agree that that's what it would appear to be.</p> <p>22 Q. Do you recall receiving this e-mail from Karen?</p> <p>23 A. Vaguely.</p> <p>24 Q. What vaguely do you recall?</p> <p>25 A. I remember the reason -- I do remember getting it, but not</p>	<p style="text-align: right;">Page 71</p> <p>1 A. Yes.</p> <p>2 Q. Do you still have that departmental assigned computer?</p> <p>3 A. No.</p> <p>4 Q. Do you know what happened to it?</p> <p>5 A. Don't have a clue. It was taken and probably recycled.</p> <p>6 Q. Do you remember when that was?</p> <p>7 A. This year.</p> <p>8 Q. Did you receive a directive at the time, either the</p> <p>9 associated wiretap case was filed or this case was filed</p> <p>10 to preserve any electronically stored information?</p> <p>11 A. Yes.</p> <p>12 Q. Did you act on that directive?</p> <p>13 A. The directive was sent to City IT for them to do exactly</p> <p>14 what you said.</p> <p>15 Q. Do you know whether or not your e-mail from August 29,</p> <p>16 2011, would have been preserved pursuant to that</p> <p>17 directive?</p> <p>18 A. I have no idea whether it was.</p> <p>19 Q. Do you know where your e-mail is stored?</p> <p>20 A. Not on my computer. I don't know where it is, but it</p> <p>21 would not be on my computer.</p> <p>22 Q. Is there a central server that would be the repository for</p> <p>23 such information?</p> <p>24 MR. SULLIVAN: Objection, lack of foundation. Go</p> <p>25 ahead.</p>
<p style="text-align: right;">Page 70</p> <p>1 really acting upon it due to the fact that -- well,</p> <p>2 portions I acted upon, portions I didn't. I do remember</p> <p>3 the reason why I was -- why I received it is that we were</p> <p>4 in budgetary cycles. And we were looking at replacing the</p> <p>5 recording system and we needed budgetary figures for a new</p> <p>6 system to include in the 2012 budget as a capital item.</p> <p>7 Q. And do you recall receiving the recorded audio line</p> <p>8 portion?</p> <p>9 A. No, I don't recall that.</p> <p>10 Q. Do you recall why the recorded audio line portion would</p> <p>11 have been attached to this e-mail?</p> <p>12 MR. SULLIVAN: Objection, lack of foundation,</p> <p>13 personal knowledge. Go ahead.</p> <p>14 A. The only thing I -- I really don't know exactly why at</p> <p>15 this particular point, but we were -- Karen and I had --</p> <p>16 well, we hadn't been involved in the fact that the city</p> <p>17 was going from a Centrex based phone system to a VoIP</p> <p>18 base. And these audio lines would be used later in the</p> <p>19 year for configuring our system.</p> <p>20 Q. Okay.</p> <p>21 A. That would be the only reason I would think that she would</p> <p>22 send them to me.</p> <p>23 Q. This would have been sent to your e-mail that you would</p> <p>24 have accessed through your departmental assigned computer;</p> <p>25 that's correct?</p>	<p style="text-align: right;">Page 72</p> <p>1 A. I really don't know where the City of South Bend stores</p> <p>2 their archived e-mail.</p> <p>3 Q. It's not in some cloud, is it?</p> <p>4 A. It very likely is. I know they're moving toward it.</p> <p>5 That's why I said I don't know where it's being stored as</p> <p>6 of right now.</p> <p>7 Q. That opens up all new ethical issues.</p> <p>8 A. But everything's going that way.</p> <p>9 Q. Did you ever take any actions to delete any of your</p> <p>10 e-mails that you would have received from Karen DePaepe?</p> <p>11 A. I'm sure I deleted e-mails sometime, you know, in our long</p> <p>12 association.</p> <p>13 Q. Okay. Do you know specifically whether you deleted this</p> <p>14 particular e-mail that's referenced in Exhibit 3?</p> <p>15 A. I have no idea as we sit here whether I deleted it or</p> <p>16 whether it's even in archival with the City of South Bend.</p> <p>17 Q. Now, referring to the list that's attached to Exhibit 3,</p> <p>18 if you want to go back to -- it would be on the third page</p> <p>19 of this exhibit. It is entitled "Recorded Telephone</p> <p>20 Lines." Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. And it consists of two pages, correct?</p> <p>23 A. That is correct.</p> <p>24 MR. SULLIVAN: I would just object that we don't</p> <p>25 know that the last two pages of Exhibit 3 are, in</p>

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1 fact, the same thing that was attached to the e-mail
2 Exhibit 3. I'll just interpose that objection.
3 BY MR. DUERRING:
4 Q. Did there come a point in time after August 29, 2011, and
5 December 31, 2011, that you learned that the list that I'm
6 referring to, this two-page list, did in fact represent
7 the recorded telephone lines of the department?
8 A. A similar list, whether it's the same list or not, was
9 shown to me by Diana Scott in October of 2011. Whether
10 it's the same list or not, I can't tell you yes or no.
11 The only thing I can tell you is it appears that these two
12 pages are not printed at the same time in my opinion.
13 Q. Whether the pages were printed at the same time, my
14 question was whether or not you became aware during that
15 timeframe that this was an accurate compilation or list of
16 phone lines being recorded by the system at the
17 department?
18 A. I have no idea whether it is an accurate representation of
19 all phone lines recorded.
20 Q. Okay. You indicated that at some point in time Diane
21 Scott showed you a list, correct?
22 A. That is correct.
23 Q. And that would have been at a meeting that Karen DePaepe
24 was not able to attend due to the fact she was on family
25 medical leave; is that correct?

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1 A. That is correct.
2 Q. And do you know about what time that meeting would have
3 occurred?
4 A. October of 2011.
5 Q. Okay. Now, what did you do with the list that she showed
6 you at that meeting?
7 MR. SULLIVAN: Objection, mischaracterizes. Go
8 ahead.
9 A. The list wasn't shown only to me. The list was shared
10 with City IT, call recs, representatives, vendors, and
11 other individuals that were in the meeting as a
12 representation of what was or may be recorded at that
13 particular point in time.
14 Q. So it was distributed among everybody at the meeting, is
15 that what you're saying?
16 A. There were multiple copies made.
17 Q. Were you given a copy?
18 A. Yes.
19 Q. What did you do with your copy?
20 A. It may have gone into a file regarding the call recs
21 system.
22 Q. The what?
23 A. Call recs system I believe it's called.
24 Q. And the file would be labeled call recs system?
25 A. I don't know exactly what it's labeled. But if it's going

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1 to be any place, if I kept a copy, I would have put it
2 into a file that would have involved -- it might even be
3 under the VoIP system because that's what the meeting was
4 all about, the transition of hundreds of phone lines,
5 analog phone lines, circuits, etc., to a city-managed VoIP
6 system.
7 MR. SULLIVAN: Counsel, was it called "rex" with
8 an X at the end?
9 THE WITNESS: I don't know. It's either "call
10 RX" or -- I don't think it's rex like a dinosaur, but
11 I think it's RX. I could be wrong.
12 MR. SULLIVAN: I just wanted to know the sound at
13 the end of it. You were trying to make an X sound at
14 the end?
15 THE WITNESS: Yes, I believe that's what it is.
16 MR. DUERRING: I thought it was "rec," short for
17 recording.
18 MR. SULLIVAN: Maybe that's --
19 THE WITNESS: I don't know. I'm not involved in
20 the system at all.
21 BY MR. DUERRING:
22 Q. Okay. Who attended that meeting besides yourself?
23 A. As I mentioned, there was individuals from --
24 Q. Well, if you could, so we don't waste any time, when I say
25 "who," I'm talking about names. Give me --

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1 A. I don't know their names.
2 Q. You don't know anybody's name who attended?
3 A. I was trying to explain about the vendors. I don't know
4 their name.
5 Q. Of the people who attended that you did know, can you tell
6 me those?
7 A. I believe Keith Crain from City IT.
8 Q. Is that C-r-a-i-n or K-r --
9 A. C-r-a-i-n.
10 Q. That's City IT?
11 A. Right.
12 Q. Okay.
13 A. Shawn Dehaney or Delahanty, something like that. He's
14 from City IT. Diana Scott, myself.
15 Q. Is it Diana or Diane?
16 A. Diana Scott.
17 Q. Okay.
18 A. Myself, Captain Phil Trent, Barb Holleman. That's the
19 only people I can remember. There may have been other
20 people. Right now I just don't remember anyone else.
21 Q. Okay. And you testified that this list was -- multiple
22 copies were made of the list that Diane Scott had and were
23 distributed among these participants; is that correct?
24 A. That is correct, and -- that is correct.
25 Q. To your knowledge, was there any instruction at the time

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<p>1 this was distributed that this list should remain 2 confidential? 3 A. No. 4 Q. Not to jump around, but I am going to. 5 Do you ever recall receiving or having a telephone 6 conversation with Karen DePaepe which would have occurred 7 the same day that this e-mail is dated August 29, 2011, 8 about the list of recorded telephone lines? 9 A. No. 10 Q. Are you testifying that that conversation would not have 11 occurred, or you just don't recall that conversation? 12 A. I have no idea if there was a conversation or not. 13 Q. Do you recall any time on that day talking with Karen 14 DePaepe about any of the lines that were denoted as 15 recorded lines? 16 A. No, sir. 17 Q. Do you recall any specific discussions that occurred at 18 this meeting we've been talking about in response to any 19 of the information that was on the list of recorded 20 telephone lines that Diane Scott distributed among the 21 participants? 22 A. The only thing I remember is that the purpose of this 23 production of this list by Diana Scott was to assist us in 24 the smooth transition to the VoIP system and what would be 25 recorded on either the VoIP system or what would be</p>	<p>1 was a notation on, I guess the second page; and it says 2 for the phone number 245-6031, it says, "Detective Bureau 3 (was division chief now division captain's line)." 4 There was a discussion as to 6031, whether -- I know 5 there was a discussion on that number. Whether all of 6 this text was actually laid out exactly like that on that 7 day, I don't know. But I do know the number was something 8 that was of question as to whose line that was. 9 Q. Okay. Are you saying that the information or the words 10 that are contained in that parens after detective bureau 11 which says was division chief, now division captain's 12 line, are you saying that wasn't on the list you were 13 provided? 14 A. While we sit here, I have no idea whether that was there 15 or not. And the reason why is it was a quandary and it 16 was mainly a discussion between Captain Trent and Diana 17 Scott as to the 245-6031 whose line could it be. And if 18 by some chance that parentheses was there and the 19 information that was in the parentheses, it would have 20 been quite obvious. But it required -- I believe it was 21 Captain's Trent to actually physically call the number to 22 find out whose line that was. 23 Q. Did they call the number that was listed as 235-9264? 24 A. No. 25 Q. Did they call the number that's listed as 235-9263?</p>
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<p>1 recorded on the Dynamic Instrument system. 2 Q. Okay. And what was that discussion about? 3 A. As to the discussion was what was going to remain on 4 the -- as I just mentioned, as to what was going to remain 5 on the city system -- correction, what was going to remain 6 on the Dynamic Instrument system versus what was going to 7 go on the new city system. 8 Q. Okay. And what was the result of that discussion, if any? 9 Was there a conclusion reached? 10 A. There was a conclusion that the majority of the lines, or 11 I guess I should say not lines, but the positions on the 12 first page that's entitled on the top recorded telephone 13 lines dealing with police, fire, and direct ring-down 14 lines, the majority of those positions, not lines, was 15 going to be handled -- would continue to be handled by the 16 DI system. 17 And that the majority of the positions on the second 18 page that's entitled administrative phones and going back 19 to that first page where it says under police, those 20 positions, not lines, could be handled by the new VoIP 21 system and that the final determination would be by the 22 chief of police as to what lines would be recorded or not. 23 Q. Okay. Was there any other discussion with respect to the 24 information contained on these lists? 25 A. The only other discussions that I do remember was there</p>	<p>1 A. No, because those numbers have been there probably before 2 I was even a police officer. Those lines were always 3 known by us probably for 30 years whose lines they were. 4 Q. Well, they were lines that went into the detective bureau, 5 correct? 6 A. Yes. Probably for 30 plus years. 7 Q. And are you saying you did not recognize the line 245-6031 8 as a line going into the detective bureau? 9 A. No, not at all. 10 Q. Is it safe to say you were not aware that that line was 11 originally placed on the recording system by Chief Thomas 12 Fautz when that line was assigned to Eugene Kyle as 13 division chief for the investigative bureau? I believe at 14 that time it was called investigative bureau. 15 MR. SULLIVAN: Objection, mischaracterizes, lacks 16 foundation. Go ahead. 17 A. 245-6031, back when Chief Fautz was the chief of police 18 and when this meeting took place in October, I had no 19 independent recollection that was Gene Kyle's old number. 20 Q. Do you recollect ever having a conversation with Karen 21 DePaepe between August 29, 2011, and this meeting in 22 October of 2011 where you asked Karen DePaepe directly 23 whether or not Brian Young knew his line was being 24 recorded referencing the 245-6031? 25 A. No, I never had a conversation during that time period</p>

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1 regarding Brian Young's line.
2 Q. Do you recall at the meeting in October 2011 that we've
3 been talking about that I think it would have been Phil
4 Trent making the comment or asking the question as to
5 whether or not Brian Young knew his line was being
6 recorded?
7 A. Yes.
8 Q. And you're saying this only occurred after someone called
9 this line and listened to where it was ringing?
10 A. I believe it was relatively sure that it was -- Phil Trent
11 called the line, which was a very commonsense way to
12 determine whose line it was because we all looked
13 dumbfounded as to whose line that could be.
14 And that was the reason why I have a hard time
15 understanding why we could not have -- we couldn't have
16 figured out among ourselves that it would have been
17 Captain Young's line if whatever was in the parentheses
18 was in the parentheses back in October of 2011.
19 Q. Obviously I would assume correctly that if your e-mail,
20 this e-mail would have been saved, we would have been able
21 to get a copy of everything and see whether or not it was
22 sent to you on the 29th or not, of August, correct?
23 A. Only if City IT has it. I cannot pull it up.
24 Q. Have you tried to pull it up?
25 A. Yes.

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1 Q. When did you try?
2 A. Sometime in the last two years. I just don't remember.
3 But it's not there. There's a variety of reasons why it
4 may not be there. It wasn't because of anything on my
5 part, but it is due to the fact that the city switched
6 over to new systems. We used to be on Novell, as you can
7 tell from the screen; and we're on Outlook.
8 Q. Now, you were questioned by certain federal authorities
9 dealing with the investigation they conducted on the
10 recording system which would have been from January of
11 2012 to May of 2012, correct?
12 MR. SULLIVAN: Compound. Are you asking the
13 dates or whether he was questioned?
14 Q. Whether he was questioned regarding that investigation. I
15 thought that was one question. I tried.
16 Were you questioned during that investigation that
17 occurred between those dates?
18 A. All I can say is I don't know about between those two
19 dates, but January and February, yes.
20 Q. Okay. Who questioned you?
21 A. Two members of the Federal Bureau of Investigation,
22 Department of Justice, one last name Dane, the other Tim
23 Teregan, Terevan, something like that -- I know I'm
24 mispronouncing it -- as well as U.S. Attorney Donald
25 Schmid.

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1 Q. Okay. And to your recollection, was that questioning
2 recorded in any fashion?
3 A. Yes.
4 Q. How was it recorded, to your knowledge, if you know?
5 A. Digital recorder.
6 Q. Were you questioned more than once, on more than one
7 occasion?
8 A. Yes.
9 Q. Were the participants who questioned you the same?
10 A. No.
11 Q. The second time -- I'm assuming you described the first
12 time you were questioned?
13 A. No. I described both the participants both times.
14 Q. The first time you were questioned, was that questioning
15 recorded?
16 A. Yes.
17 Q. Where did that questioning take place?
18 A. Federal building in a conference room. You know what, I'm
19 sorry. I don't remember where the first one was, whether
20 it was at the FBI office or if it was in the federal
21 building. I only know where the second one was.
22 Q. When you're talking about the federal building, where was
23 that federal building located, here in South Bend?
24 A. Here in South Bend.
25 Q. Who was present at that first questioning?

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1 A. It would just be the two FBI agents, and I believe it was
2 on or about February 6 of 2011.
3 Q. And was that recorded?
4 A. Yes.
5 Q. Now, there was a second time?
6 A. Yes.
7 Q. When did that take place?
8 A. Unfortunately I don't remember.
9 Q. Where did that take place?
10 A. That one was at the federal building.
11 Q. Here in South Bend?
12 A. Yes.
13 Q. Was that recorded?
14 A. Yes.
15 Q. Who was present then?
16 A. The two FBI agents that I talked about as well as Donald
17 Schmid.
18 Q. And did you provide any documentation to them in either
19 one of the sessions?
20 A. In the first session, the purpose of the session was to
21 hand over both electronically as well as in hard copy
22 various documents that myself as keeper of records for the
23 South Bend Police Department had gathered pursuant to a
24 subpoena.
25 Q. Okay. And is there anywhere that you possess a list of

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<p>1 those documents or a recording of what documents you</p> <p>2 turned over to the federal authorities in either one of</p> <p>3 those sessions?</p> <p>4 A. I don't believe I have a list of the actual documents that</p> <p>5 were turned over.</p> <p>6 Q. Did you retain a copy of the actual documents that were</p> <p>7 turned over?</p> <p>8 A. I do have some of the documents in hard copy and</p> <p>9 electronic that I had turned over.</p> <p>10 Q. And where would they be?</p> <p>11 A. They would be in my office.</p> <p>12 Q. How are they stored?</p> <p>13 A. Both digitally and in hard copy.</p> <p>14 Q. Why do you only have some of them?</p> <p>15 A. Because some documents were handed over directly, I guess,</p> <p>16 from other individuals to the federal authorities that</p> <p>17 circumvented the subpoena.</p> <p>18 Q. How did that happen, if you know?</p> <p>19 A. It was up to the individual that -- or individuals that</p> <p>20 may have talked to the federal authorities to do it</p> <p>21 themselves.</p> <p>22 Q. Do you recall whether or not you turned over a copy of the</p> <p>23 list of recorded lines that you would have been given as</p> <p>24 you testified to by Diana Scott at that October of 2011</p> <p>25 meeting?</p>	<p>1 Q. How many depositions have been taken?</p> <p>2 A. At least two, one being by your better half.</p> <p>3 MR. SULLIVAN: Counsel, if I may, when the</p> <p>4 witness says two depositions, there were two</p> <p>5 different times that --</p> <p>6 MR. DUERRING: I'm aware of that. I just didn't</p> <p>7 know he if reviewed any other --</p> <p>8 MR. SULLIVAN: That's what I thought, but I</p> <p>9 wanted to make sure we clarify that.</p> <p>10 BY MR. DUERRING:</p> <p>11 Q. Did you review any other depositions other than the</p> <p>12 deposition that was taken of yourself?</p> <p>13 A. Only myself. I have no other possession of any other</p> <p>14 depositions.</p> <p>15 Q. Were there any other documents that you reviewed in</p> <p>16 preparation of the deposition today?</p> <p>17 MR. SULLIVAN: Subject to my objection and</p> <p>18 instruction.</p> <p>19 A. Only other thing I can remember glancing at was the</p> <p>20 subpoena and making note of the date of the federal</p> <p>21 subpoena to kind of refresh my memory.</p> <p>22 Q. Any other documents?</p> <p>23 A. Not as I can remember right offhand.</p> <p>24 Q. Okay. I'm going to ask you very specifically because I</p> <p>25 respectfully disagree with Mr. Sullivan's exercise of any</p>
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<p>1 A. As we sit here right now, I have no idea whether that was</p> <p>2 part of the documentation.</p> <p>3 Q. Is there anything that you could review in order to</p> <p>4 refresh your recollection?</p> <p>5 A. Yes. I would have to open the file and/or see if I have a</p> <p>6 listing of the various documents.</p> <p>7 Q. As an aside, what documents did you review in order to</p> <p>8 prepare for your deposition today?</p> <p>9 MR. SULLIVAN: Interpose an objection to the</p> <p>10 extent the question asks for any documents reviewed</p> <p>11 that were part of work product. If he reviewed any</p> <p>12 documents that helped him refresh his recollection on</p> <p>13 any points relevant to the case, he can answer as to</p> <p>14 those.</p> <p>15 A. As it relates -- the only thing I could -- that I reviewed</p> <p>16 as it relates to this case was -- well, to refresh my</p> <p>17 recollection, over 150 pages of deposition that has been</p> <p>18 taken by various counsel over two other depositions.</p> <p>19 Q. Which two depositions?</p> <p>20 A. Two depositions that took place at Attorney Pfeifer's</p> <p>21 office.</p> <p>22 Q. Of whom?</p> <p>23 A. I'm sorry, of me.</p> <p>24 Q. Of you?</p> <p>25 A. Yes.</p>	<p>1 work product privilege. If you reviewed a document in</p> <p>2 preparation of this deposition, I'm entitled to know what</p> <p>3 that is. That's my position. He may disagree.</p> <p>4 So I'm going to ask you, did you review any other</p> <p>5 documents aside from the subpoena and the transcript of</p> <p>6 your depositions as you've indicated here?</p> <p>7 MR. SULLIVAN: Let me just --</p> <p>8 MR. DUERRING: It's a yes or no.</p> <p>9 MR. SULLIVAN: That's what I want to tell the</p> <p>10 witness. Confine your answer to yes or no. He's</p> <p>11 entitled to that.</p> <p>12 THE WITNESS: Yes.</p> <p>13 MR. DUERRING: Well, the next question is what</p> <p>14 did he review? And I'm not even sure you know what</p> <p>15 that is. What did he review?</p> <p>16 What did you review?</p> <p>17 MR. SULLIVAN: Object, calling for him to</p> <p>18 describe documents that he reviewed with me that are</p> <p>19 unrelated to refreshing his recollection, reveals</p> <p>20 work product. And based upon that, I'm going to</p> <p>21 instruct the witness not to answer. And let's go off</p> <p>22 the record just briefly.</p> <p>23 (Discussion held off the record.)</p> <p>24 (Recess taken.)</p> <p>25 MR. SULLIVAN: We have an agreement that he can</p>

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1 answer the question what document he reviewed with
2 me, what other document he reviewed with me; and it's
3 not a waiver of any work product. I would assert the
4 privilege as to any follow-up questions about that
5 document in the context of his meeting with me.
6 Okay.
7 MR. DUERRING: Okay.
8 MR. SULLIVAN: And I would instruct the witness
9 not to answer any questions about the discussion of
10 that document with me.
11 MR. DUERRING: That's fine.
12 MR. SULLIVAN: But the conversation also revealed
13 that there was a category of documents that I assumed
14 he was referring to in a meeting with us, and it
15 wasn't -- and that's not privileged, and I'll let him
16 clarify that as well.
17 BY MR. DUERRING:
18 Q. All right.
19 A. In preparation for this deposition, I had looked on my
20 city computer under electronic files, and I was looking
21 for a listing of items handed over to the federal
22 authorities. It was a Word document that I prepared. And
23 that kind of listed out all the items I had given to the
24 federal authorities.
25 Again, like I said, it was a Word document. And it

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1 appeared that I didn't save it on the file because I
2 printed it out, made a book with -- a three-hole punched
3 book with all the hard copy documents that I turned over
4 to them. And it appeared that I didn't keep a copy to
5 review and everything was just handed over to them along
6 with the pertinent sections of the -- pertinent
7 print-outs.
8 And that was the only thing that I went to look for,
9 and I didn't see it because I was kind of thinking --
10 wondering what you were going to ask and try to be
11 prepared. So that's what I tried to do in preparation,
12 but it wasn't there.
13 Q. Okay. Anything else, any other documents?
14 A. The only other document was a document sent by Ed
15 Sullivan, sitting to the left of me, to myself as -- it
16 was an officer report of Karen DePaepe with redactions
17 that was dated January of 2012 for me to review because I
18 had been shown that particular officer report by her --
19 sometime after the date of that document. And I was told
20 to review it and destroy it.
21 Q. Any other documents?
22 A. No.
23 Q. Did you ever see an officer's report generated by Diane
24 Scott detailing what occurred during the meeting that you
25 have described earlier?

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1 A. Yes.
2 Q. But you did not review that report in preparation for the
3 deposition?
4 A. No.
5 Q. Now, as I understand it, you had made a file, a Word file
6 listing the items given to the federal authorities; is
7 that correct?
8 A. Yes.
9 Q. Do you still have that Word document?
10 A. As I mentioned earlier, I could not find it.
11 Q. You indicated you made a book of all the hard copies. Do
12 you have a copy of that book?
13 A. No.
14 Q. Who has that book?
15 A. The Federal Bureau of Investigation.
16 Q. Now, do you know the reason why the department was
17 considering transferring or moving over to what I think
18 you referred to as a VoIP system?
19 MR. SULLIVAN: Objection, lack of foundation. Go
20 ahead.
21 A. The reason why is primarily cost savings.
22 Q. Do you know in what way it would be a cost savings move?
23 MR. SULLIVAN: Objection, lack of foundation. Go
24 ahead.
25 A. It would be a large cost savings due to the fact that we

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1 were -- we had the potential to transition from Centrex
2 business lines, which are quite costly, to a VoIP system
3 housed, managed by outside companies.
4 From what I remember during the initial preliminary
5 planning meetings with IT and when they were looking at
6 selecting various vendors, I remember it was to be over
7 several years it would result in several hundreds of
8 thousands of dollars worth of savings to the city of South
9 Bend.
10 Q. Do you recall Karen DePaepe ever reporting to you that the
11 Dynamic system and Reliant system was malfunctioning?
12 A. Yes.
13 Q. Do you recall her indicating to you that the system had
14 been malfunctioning in 2010?
15 A. The actual dates I really couldn't say that she may have
16 told me. When it was, I do know a couple occasions, at
17 least two occasions that there was malfunctions, either
18 with the DVD drive and/or hard drive.
19 Q. Okay. And is it safe to assume that it was within her
20 responsibilities to make sure the system was repaired
21 correctly?
22 A. It would be her responsibility to contact the Steven
23 Campbell & Associates, which is the party that we have an
24 agreement with, IEA, maintenance agreement, to have it
25 brought back to its default state.

<p style="text-align: right;">Page 93</p> <p>1 Q. So is it your testimony that regardless of what the 2 malfunction was, she was to contact Steven Campbell & 3 Associates to have it fixed? 4 A. No. It depends on what the malfunction would be. 5 Q. So my question was more general. When there was a 6 malfunction, she was responsible for making sure that the 7 necessary steps were taken to get the equipment back 8 operating as you say within the default state, correct? 9 A. Yes. 10 Q. And that may include calling Steve Campbell and having a 11 technician come out to repair it, correct? 12 A. It could involve that, or it can involve just hitting 13 reset. 14 Q. Right. And anything in between? 15 A. Anything, right. 16 Q. But it was Karen DePaepe's responsibility to make sure 17 that was done, correct, as director of communications? 18 A. To facilitate or initiate its repair. 19 Q. To your knowledge, was there anyone else that had that 20 responsibility or that responsibility was shared in any 21 way with anyone else? 22 A. I guess I'm confused about only with the recording system 23 period or with any lines? 24 Q. The recording system area. 25 A. Only the recording system, it would be primarily her</p>	<p style="text-align: right;">Page 95</p> <p>1 say, October 1, 2011? 2 A. The only lines that I could positively say that I knew a 3 hundred percent were recorded would have been the front 4 desk lines through a series of 235-9201 through and 5 including 206. I knew those lines were recorded, no if's, 6 and's, or but's. 7 But as it relates to internal affairs, through and 8 including which lines in the detective bureau were 9 recorded, that was between the director of communications 10 and the chief of police. 11 Q. So you did not know that those lines were being recorded; 12 is that correct? 13 A. A hundred percent, I did not know those lines were 14 recorded. 15 Q. Well, if you had a percentage, what percentage would you 16 place on that knowledge? 17 A. I guess in some ways a little bit of hearsay 18 unfortunately. I was under the belief that Barb 19 Holleman's line or the chief of police's line -- into the 20 chief of police's office, not the chief of police's line. 21 I was under the impression that it could be recorded, 22 didn't really know a hundred percent sure if it was. 23 When it comes to division chiefs, I only was 24 relatively sure that the detective bureau chief's line may 25 have been recorded. But that would have been -- I don't</p>
<p style="text-align: right;">Page 94</p> <p>1 responsibility and/or her assistant director in her 2 absence. 3 Q. Who would be Diane Scott, correct? 4 A. That is correct. 5 Q. Did you ever participate or observe any of the repairs 6 that the system underwent during 2010? 7 A. No. 8 Q. Just to make sure, I'm kind of going to go over some 9 things to make sure I've got the correct information here. 10 Now, it's my understanding that -- and I'm going to 11 talk to you -- all of these questions are going to be 12 between the dates that you became chief of services, the 13 date, whenever that was, you said it was shortly after 14 Chief Boykins came into power so to speak and December 31, 15 2011. Okay. Got that timeframe in your head? 16 A. Yes. 17 Q. This question though will be a little different. Sorry. 18 Prior to October of 2011, is your testimony that you 19 did not have any idea of which administrative lines were 20 being recorded by the Dynamic Instrument recording system? 21 Is that correct or incorrect? 22 A. That is incorrect. 23 Q. Which particular administrative lines were you aware were 24 being recorded by the Dynamic Instruments recording system 25 between the date that you became chief of services and,</p>	<p style="text-align: right;">Page 96</p> <p>1 know if it still was. I don't have a clue because I guess 2 we're not talking about that time period. 3 That would have been the time period before, so I 4 guess I didn't know whether it was or was not. So I can 5 say definitely -- not definitely. I felt that Barb 6 Holleman's line was possibly recorded during that time 7 period. But the other lines, I don't know. 8 Q. Okay. And you are not as a chief of services and part of 9 the chain of command to authorize a line to be recorded; 10 that's my understanding, correct? 11 A. Not at all. 12 Q. That as chief of services, you did not write any policy on 13 how the recordings are to be accessed; is that correct? 14 A. Which recordings? 15 Q. The recordings that we've been talking about that were 16 made by the Dynamic Instruments recording system between 17 those periods of time that you became chief of services 18 and December 31, 2011? 19 A. I'd have to say that's incorrect. 20 Q. Okay. What policy did you write concerning how the 21 recordings are to be accessed on that system? 22 A. It all depends on what recordings you're talking about. 23 There's 40 different types of recordings. There are 24 policies and procedures in place as it relates to how 25 recordings are to be pulled from that system as relates to</p>

<p style="text-align: right;">Page 97</p> <p>1 subpoenas, training, a whole variety of different things. 2 Q. That you wrote? 3 A. That I participated in. 4 Q. And where would they be located now? 5 A. They would be in the duty manual. 6 Q. Do you know how they would have been categorized or 7 identified or indexed in the duty manual? 8 A. Not right off what part of it is. But, again, there are 9 forms that are to be filled out, whether it could be by 10 civilians under FOIA requests, could be by lawyers under 11 FOIA requests. It could be through the digital media 12 form. It could be through court subpoena. All those are 13 part of policies and procedures and forms that the South 14 Bend Police Department uses to extract information from 15 that system. 16 Q. And they would be in the duty manual? 17 A. I believe they would either be in the duty manual, or it 18 would be in a departmentally approved form. 19 Q. And it's also then my understanding that you initiated -- 20 you did not initiate any training to Karen DePaepe 21 regarding legal procedures involving intercepted 22 recordings? 23 A. No. 24 Q. Did you ever participate in any training directed to Karen 25 DePaepe as to how she could access the intercepted</p>	<p style="text-align: right;">Page 99</p> <p>1 A. No. 2 Q. There came a point in time when Karen advised you that 3 she -- and this would have been sometime in 2011, that she 4 had come across some intercepted conversations that 5 disturbed her; is that correct? 6 A. Yes, sir. 7 Q. And did you understand the circumstances under which she 8 initially heard these conversations? 9 MR. SULLIVAN: Objection, vague. Go ahead. 10 A. She had mentioned that sometime in late 2011 or January of 11 2012, sometime within that last month of the year or the 12 first month of the new year, that there was a malfunction 13 with the Dynamic Instrument system and there was a hard 14 drive crash. 15 MR. SULLIVAN: Let's get a date correction. You 16 guys sort of missed each other on that. 17 Q. You mentioned 2011 to 2012. I think you're looking at 18 2010 to 2011. 19 A. Hold on. I have to write it down. 20 MR. SULLIVAN: Give him a reference date on 21 termination and go from there. 22 Q. She was terminated in April of 2012. You had a meeting 23 about the VoIP system and recording system in October of 24 2011. 25 A. Right. I knew that.</p>
<p style="text-align: right;">Page 98</p> <p>1 conversations and under what circumstances she could 2 access the intercepted conversations? 3 A. I know that Karen and I had discussions about the fact 4 that she was to keep a record of and documentation on the 5 various requests for information that she was pulling. 6 Whether it was using the city approved forms, 7 subpoenas, training records, requests for training, 8 quality assurance, she assured me that she was keeping a 9 log and had files on each and every request and each and 10 every pull, I guess you want to call it, or any 11 recordings. 12 Q. When did that take place? 13 A. Several times during that four-year period. 14 Q. Were any of those times ever documented? 15 A. No. It was just pretty much management walking about, 16 stopping and talking to Karen, seeing how things were 17 going. And many times we would have conversations in her 18 office, you know, how things were going. 19 She would inform me of any problems she's had or 20 equipment problems or personnel problems. And throughout 21 the years that we worked together, she would keep me up to 22 date as to things that were going on as relates to her 23 charge. 24 Q. Was there anybody else present when any of these 25 conversations took place?</p>	<p style="text-align: right;">Page 100</p> <p>1 Q. My understanding of what the evidence is is that the hard 2 drive failures were occurring in late 2010 with the 3 repairs being effectuated sometime in the beginning of 4 2011. 5 A. That's not what my understanding is as to when we had a 6 conversation. 7 Q. Well, as far as when you had the conversation. But I'm 8 asking the circumstances under which she heard these 9 conversations. 10 A. And what I understood, you were putting a date -- she 11 heard these conversations in late 2011, early 2012. You'd 12 asked me the question of when did we have this 13 conversation about hard drive failures and the fact that 14 she heard something that was troubling to her while she 15 attempted to ascertain possible data loss from what I 16 understood to be a crash that took place in latter 2011, 17 which is approximately December. 18 Q. Okay. So your recollection of this conversation -- of the 19 circumstances under which she discovered these 20 conversations resulted as a hard drive crash that occurred 21 in late of 2011? 22 A. Yes. 23 Q. Well, I can't correct your assumption, so have at it. 24 MR. SULLIVAN: Do you have any documents or 25 anything --</p>

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1 MR. DUERRING: Not with me. I didn't think that
2 was going to be an issue.
3 MR. SULLIVAN: Go ahead.
4 MR. DUERRING: Let's take a break for a second.
5 MR. SULLIVAN: Off the record.
6 (Discussion held off the record.)
7 BY MR. DUERRING:
8 Q. I'm going to ask you that question again.
9 Do you recall what period of time it would have been
10 that she would have been listing or she would have
11 discovered this conversation that disturbed her?
12 A. In our conversation in her office, late -- again, it could
13 be December, could have been January. When I say late, I
14 mean late December of 2011, through and including possibly
15 January of 2012, she had mentioned to me that she had
16 while trying to determine a crash of the system and
17 possible loss of data from the hard drive, since she had
18 come back from maternity -- not maternity, I'm sorry --
19 from FMLA, so it would have been any time from October --
20 well, November, December.
21 It would have been extremely recent in 2011, I was
22 led to believe that a crash had taken place in relatively
23 close proximity to our conversation and that she was
24 attempting to rebuild, reconstruct the hard drive for a
25 recent event, and she came across some information that

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1 troubled her, and that she had reported it to the chief of
2 police.
3 Q. And where did this conversation with Karen take place?
4 A. As I mentioned, in her office.
5 Q. And do you recall why you were in her office?
6 A. Just, again, like I mentioned, was a basic management
7 technique as management by walking about now and then. We
8 had conversations in her office routinely.
9 Q. And do you recall how this topic came up?
10 A. No, sir. I think it was just as a matter of fact for her
11 to let me know that something was -- that she had taken
12 some to the chief, and she thought I should know also as
13 division chief.
14 Q. Do you think that was appropriate?
15 A. I think it was appropriate. I would like to have known a
16 little bit earlier, but I think it was appropriate.
17 Q. I'm a little late on this, but objection vague as to what
18 part of that was appropriate. Go ahead.
19 A. And then in many cases I felt I was left out between
20 conversations between her and the chief of police.
21 Q. Left out how?
22 A. Just Chief Boykins had an open-door policy. And in many
23 cases, whether it was myself as division chief or other
24 individuals, the chain of command wasn't always followed.
25 Q. And you're not referring just to only Karen DePaepe's

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1 actions, you're referring to other department personnel as
2 well?
3 A. Yes.
4 Q. As I understand it, the information that she was talking
5 about came from listening to an assigned phone line that
6 had been placed on the recording system, correct?
7 MR. SULLIVAN: Objection, lack of foundation. Go
8 ahead.
9 A. It dealt with Karen had told me was information that she
10 had heard on a phone line that she felt rose to the level
11 that she needed it to the chief of police.
12 Q. Okay. And -- right. Did she indicate to you which line
13 that the phone was assigned to?
14 A. Yes.
15 Q. What did she indicate?
16 A. She said that the phone line was at that particular time
17 belonged to Captain Brian Young.
18 Q. Okay. It was assigned to him?
19 A. Yes.
20 Q. And Brian Young at that time was -- what position did he
21 hold?
22 A. He was a captain, second in charge in the investigative
23 division.
24 Q. Go ahead. So this would have been what was referred to as
25 an administrative phone line?

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1 A. I guess if that's what you want to call it.
2 Q. Well, it wasn't a front desk phone line, correct, that she
3 was identifying?
4 A. It wasn't a front desk. Administrative to me always makes
5 it sound like it was a higher up or -- it was a phone line
6 that was assigned to a particular officer.
7 Q. Okay. Well --
8 A. Because administrative could have been the front desk.
9 Q. Well, in your recollection then, what you're telling me is
10 she would have had this conversation sometime after she
11 got back from her leave, her medical leave, correct?
12 A. That is correct.
13 Q. And before the federal authorities served the subpoena,
14 correct?
15 A. Yes.
16 Q. So this would have been after the meeting that you said
17 took place in October of 2011 wherein you were supplied
18 with a list of the recorded phone lines, correct?
19 A. Yes.
20 Q. And it would have been after this conversation you said
21 occurred at that meeting where it was determined that line
22 6031 denoted as the detective bureau line was being used
23 by the division captain, correct, whom you guys determined
24 was Brian Young?
25 A. It was determined in that meeting that 6031 at that

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<p>1 particular time was assigned or was being used by Captain 2 Brian Young. 3 Q. Okay. So when she was talking to you in this conversation 4 you are relating to us now, telling you that she had heard 5 this disturbing information on a line assigned to Brian 6 Young, then that would have corresponded to the 7 information that you already knew that Brian Young's line 8 was being recorded, correct? 9 A. I didn't know if that was a sentence. I'm sorry. Could 10 you say it again? 11 Q. Sure. Let me try to restate that. 12 Based upon your testimony thus far, if this 13 conversation you had with Karen occurred between the time 14 she came back from her family medical leave and the 15 federal subpoena coming down, this conversation would have 16 been after your meeting with Diane Scott and the 17 individuals we've already talked about occurring in 18 October 2011, correct? 19 A. Yes. 20 Q. At that meeting you already testified you received a list 21 of recorded phone lines from Diana Scott, correct? 22 A. Yes. 23 Q. You also testified that as a result of the list, there was 24 a conversation and a subsequent determination that the 25 line 245-6031 was being used by Brian Young, correct?</p>	<p>1 to Brian Young, that would have been information that you 2 already knew corresponded with what you knew as far as 3 that line being on a recorded system, correct? 4 MR. SULLIVAN: Go ahead. 5 A. Yes, at that particular point in time, i.e. October of 6 2011, whatever was taking place was taking place prior to 7 the election in 2011. 8 Q. What election? 9 A. I guess it was the election for the new mayor. 10 Q. Okay. So you're saying this conversation you had with 11 Karen now can be narrowed down to sometime after she came 12 back from her medical leave to November -- 13 A. Whatever -- 14 Q. The election day in November of 2011? 15 A. It was my understanding from my conversation with Karen 16 was that it had taken place -- was in a relatively short 17 amount of time and had taken place and involved the 18 election of -- election for mayor for the City of South 19 Bend. 20 Q. Okay. Well, let's try to get through this. She advised 21 you that the information that she had listened to came 22 from an intercepted conversation on a phone line currently 23 assigned at that time to Brian Young; is that correct? 24 A. Yes. 25 Q. And at that point in time, it was your understanding that</p>
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<p>1 A. Yes. 2 Q. Now, when you had this conversation with Karen after that 3 meeting, when she told you she heard this information on 4 Captain Brian Young's assigned phone line, that would have 5 been information you already were aware that his line was 6 being recorded, correct? 7 MR. SULLIVAN: Objection, mischaracterizes. Go 8 ahead. 9 A. I did not know at the time Karen and I had the 10 conversation whether it was still being recorded. That's 11 the only thing I can honestly say. But as of October, it 12 was being recorded. 13 Q. Are you aware of any information that after October, 14 between October and December 31, 2011, that the line was 15 supposed to not be recorded? 16 MR. SULLIVAN: Objection, confusing, lack of 17 foundation. 18 Q. I confused myself. Were you aware between October of 2011 19 and December 31, 2011, of any steps that were taken to 20 remove 245-6031 from the recording system? 21 A. I was not aware of any steps, nor would I have been told 22 if there was going to be any steps. 23 Q. Okay. So getting back to the original question, when she 24 had this conversation with you, as you've testified, and 25 she told you she heard this information on a line assigned</p>	<p>1 Brian Young was a captain in the detective bureau, 2 correct? 3 A. Yes. 4 Q. And it was at that point in time that you were aware that 5 the line assigned to him was 245-6031, correct? 6 A. When we had our conversation, Karen and I, she brought it 7 back up to my attention that that line was what she had 8 heard a conversation on. 9 Q. Okay. After you had this conversation with Karen, what 10 steps, if any, did you take in response to the information 11 she provided you? 12 A. Zero steps due to the fact that the -- correction. The 13 items contained within the conversation was being handled 14 by the chief of police, that it was a direct transfer of 15 information, directly from her to him, and she was 16 expecting him to act on whatever was relayed. 17 Q. So based upon the information she relayed to you, you took 18 no additional steps; is that correct? 19 A. That is correct. I think she did it as a courtesy. 20 Q. Did what as a courtesy? 21 A. Let me know what was going on, that she had passed some 22 information on or alerted the chief as to her findings. 23 Q. Now, you indicated earlier you reviewed your deposition 24 that had been taken in the other related case; correct? 25 A. Yes.</p>

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1 Q. And I have transcripts that it occurred both on May 28,
2 2013, and June 18, 2013. Would that be accurate?
3 A. I'd have to look at my copies or your copies. But I did
4 read or review two depositions last night.
5 Q. Well, contained in the depositions is a fairly detailed
6 description of what conversation you had with Ms. DePaepe,
7 what she told you and what those conversations, at least
8 on their face -- or why she was concerned about those
9 conversations. Would you agree with me that that
10 deposition contains that?
11 MR. SULLIVAN: Objection, vague. If you want him
12 to agree to what's in there, he's going to have to
13 take a look.
14 MR. DUERRING: I understood he already did.
15 MR. SULLIVAN: Well, he did. But you're now
16 asking him to agree to something that's in there and
17 it's hundreds of pages.
18 BY MR. DUERRING:
19 Q. When you reviewed your deposition in preparation for this
20 deposition that we just talked about, okay, did you notice
21 any inaccuracies?
22 A. Yes.
23 Q. What inaccuracies did you notice?
24 A. You know, three-and-a-half to four hours worth of reading
25 I guess six point font that was given to me, I guess I

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1 don't know all of them. But there were some inaccuracies
2 throughout.
3 Q. Did you note any inaccuracies as it relates to the
4 deposition that you gave concerning what you testified
5 that Karen DePaepe told you concerning these
6 conversations?
7 A. Right now, unless I have the document in front of me, I'd
8 have to -- after reading 150 some pages of small font, I
9 didn't have the luxury of the way you have your
10 deposition.
11 MR. DUERRING: Can we go off the record for a
12 second?
13 MR. SULLIVAN: Yes.
14 (Discussion held off the record.)
15 BY MR. DUERRING:
16 Q. Chief Horvath, I keep wanting to call you captain. I'm
17 sorry.
18 Chief Horvath, do you recall after giving the
19 deposition that we've been talking about in the other case
20 being given the opportunity to review that deposition and
21 sign it or make corrections through an errata sheet?
22 A. I do know that -- I don't know if I was given the
23 opportunity. I think it was just expected for it to be
24 sent to me and to sign -- I don't know what you call it,
25 some kind of sheet.

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1 Q. Okay. And did you do that?
2 A. No.
3 Q. Do you know why?
4 A. I think it was a controversy at the South Bend Police
5 Department as to the legality and procedures forthwith as
6 to whether one would have to do that or not.
7 MR. DUERRING: Can we go off the record?
8 (Discussion held off the record.)
9 MR. DUERRING: Okay. I'm going ask you to read
10 between pages 33 and 38. I think that that would
11 cover what I want to ask.
12 MR. SULLIVAN: 33 to 38?
13 MR. DUERRING: Yes. Maybe 32 is the question
14 because 33, the top of 33 centers on it.
15 (Pause in proceedings.)
16 MR. SULLIVAN: Just to let the record reflect
17 that Chief Horvath has reviewed the deposition
18 transcript from his earlier deposition in the related
19 case pages 33 through 38.
20 BY MR. DUERRING:
21 Q. Chief, having the opportunity to review the transcript,
22 pages 33 through 38 of your previous deposition testimony,
23 is there anything in that testimony in those pages that
24 you feel the need to change or that is inaccurate? Strike
25 change and put in inaccurate.

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1 A. Maybe not inaccurate, but not completely clear as how it
2 was written.
3 Q. Okay. What part or parts aren't completely clear?
4 A. As to when Karen and I had the conversation dealing with
5 hearing a voice on that 245-6031 line, and as it relates
6 to a malfunction of the Dynamic Instrument system.
7 There are questions that were asked about, were there
8 malfunctions with the system. And I made reference that,
9 yes, it was an ongoing problem that was happening over the
10 years. But the conversation that Karen and I had in the
11 end of 2011 or early 2012 was that it was my understanding
12 that it was a recent crash of the hard drive that took
13 place in the end of 2011 since she came back from FMLA,
14 not the history from day one that we've had the DI system.
15 Q. Okay. Well, let me specifically read to you a question on
16 page 35, line 6. "So if I understand what you're saying,
17 what she said to you was that she listened to Brian
18 Young's conversations, the recording of Brian Young's
19 conversations, to see if a malfunction in the recording
20 system had been corrected?"
21 And your answer on line 10 was, "Yes, sir."
22 Is there any change with respect to that testimony,
23 that answer?
24 MR. SULLIVAN: 6 through 10, right?
25 MR. DUERRING: If that's what I said. I don't

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1 remember.
2 A. That's pretty much what the -- what would be correct.
3 Q. So that testimony is correct?
4 A. That one section.
5 Q. My understanding is after you had the conversation we've
6 been talking about at some length, you took no steps
7 because you already understood that she had reported this
8 conversation to Chief Boykins; is that correct?
9 A. That is correct.
10 Q. When you were at the federal building, and I think it was
11 the second interview where the U.S. Attorney Donald Schmid
12 was present, did you -- did Donald Schmid talk to you at
13 all about what he felt was going on with respect to the
14 complaint?
15 MR. SULLIVAN: Objection, vague. Go ahead.
16 MR. DUERRING: I wish I had a video.
17 MR. SULLIVAN: I think there's an issue with what
18 he believes he can or cannot reveal from that
19 discussion.
20 MR. DUERRING: What is the issue?
21 MR. SULLIVAN: That he was instructed not to
22 reveal his discussions with the U.S. attorney, is
23 what I think is the issue. Will you allow me -- I
24 know there's a question pending -- for purposes of
25 whether to assert a privilege or a need for a

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1 protective order or to ensure he doesn't violate
2 something, will you allow me to converse with him
3 while the question is pending?
4 MR. DUERRING: I prefer not.
5 MR. SULLIVAN: In that case, I would say that to
6 the extent the witness believes that he is under a
7 legal duty to not disclose the contents of that
8 communication --
9 MR. DUERRING: I didn't ask for the contents. I
10 asked him whether or not he had a discussion.
11 MR. SULLIVAN: Read the question back.
12 (Read back.)
13 MR. SULLIVAN: It's a yes or no question. And if
14 the witness feels that even answering that question
15 would somehow violate an understanding he has with
16 the authorities, it might subject him to some type of
17 proceeding, then I would instruct him not to answer
18 that question.
19 A. No.
20 BY MR. DUERRING:
21 Q. So as I understand it, Chief, Assistant U.S. Attorney
22 Donald Schmid did not have a conversation with you with
23 respect to the wiretap complaint that you were being
24 interviewed about?
25 A. He was tightlipped as to -- you asked about the

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1 investigation?
2 Q. Yes.
3 A. He wouldn't be discussing the investigation with me.
4 Q. Okay. Did he discuss with you at all any opinions that he
5 was forming with respect to the investigation?
6 A. I tried to get information from him. But, again, he
7 pretty much left it as a one-sided discussion.
8 Q. And was there any other assistant U.S. attorney present or
9 U.S. attorney present when this took place?
10 A. No.
11 Q. Were you told that you could not talk about what you were
12 being interviewed -- the subject upon which you were being
13 interviewed? Were you instructed that you couldn't talk
14 about it with anyone?
15 A. Yes.
16 Q. Who instructed you?
17 A. Donald Schmid.
18 Q. Did he tell you why?
19 A. No.
20 Q. When you gave your first interview to the agents from the
21 FBI, did they instruct you not to talk to anyone about
22 what you had been interviewed --
23 A. Yes.
24 Q. Did they tell you why?
25 A. No.

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1 Q. Were you Mirandized in either one of these interviews?
2 A. I don't believe so.
3 MR. DUERRING: May I have a moment with my
4 client?
5 (Recess taken.)
6 BY MR. DUERRING:
7 Q. Chief Horvath, after the two meetings that you had with
8 the federal authorities, did you place any restrictions on
9 the use of access of the recording system between the date
10 of the last interview and the date that Karen was
11 terminated?
12 A. The only thing I know is that we were under federal orders
13 to maintain, safeguard, secure the digital system, and
14 that at no time will any back-ups or anything or hard
15 drives pertaining to that time period were to be purged as
16 a normal three-year cycle. So it was mainly to safeguard
17 any type of tapes, drives, etc. That was the only thing
18 that I can think of.
19 Q. I understand that the federal authorities issued a
20 subpoena with some restrictions on it or with some
21 directives on it. I'm talking about after you had your
22 interaction with the federal authorities that we
23 described, did you come back to the department and as
24 chief of services issue any directives to Karen or anyone
25 else in the communications department that would have

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1 restricted the access and/or use of the recording system?
2 A. Not that I remember at this time.
3 Q. Is there any place that you would be able to look to
4 refresh your recollection?
5 A. No. I don't believe there was any written directives.
6 Q. Was there any verbal -- were there any verbal directives?
7 A. Not by myself, but there could have been verbal directives
8 from a multitude of other locations.
9 Q. I'm only talking about you, and I'm only talking about
10 what you know.
11 A. As of right now, I do not have any knowledge of anything
12 that -- Karen was still the administrator of the system.
13 Q. After you had the meeting with the FBI and the federal
14 authorities as we discussed, did you in any way restrict
15 Karen's duties as it pertains to the recording system?
16 A. Not that I remember. I don't believe there was any
17 restrictions.
18 Q. Between the date of your last interview or interaction
19 with the federal authorities as we discussed, and the date
20 Karen was discharged, were you aware of any policy changes
21 that occurred concerning Karen's duties with the recording
22 system?
23 A. As of right now, I just don't have any recollection of any
24 changes.
25 Q. During the period of time that you were chief of services

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1 and Karen DePaepe was director of communications, did you
2 ever have occasion to write any kind of disciplinary
3 notices as a result of failures that Karen had in
4 performing her duties?
5 A. No.
6 Q. Are you aware if anyone during that period of time would
7 have written such a notice or taken such action based upon
8 Karen's failure to perform her duties?
9 A. What happened prior to, I would not have any --
10 Q. I'm talking about while you were there as chief of
11 services, were you aware of anyone else taking any kind of
12 disciplinary action?
13 MR. SULLIVAN: Up until what time?
14 MR. DUERRING: Until the date she was disciplined
15 or --
16 MR. SULLIVAN: Are you including her --
17 MR. DUERRING: Until the date she was fired.
18 A. Prior to myself being services division chief, I have no
19 knowledge whether it happened or not. I really don't
20 know. It would have to be a search of human resources.
21 BY MR. DUERRING:
22 Q. I'm only talking about while you were the chief.
23 A. You had asked about all the time.
24 Q. I asked about anyone else. Were you aware of anyone else
25 during that period of time having to take disciplinary

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1 action against Karen?
2 A. No.
3 Q. Did you participate in the disciplinary action that was
4 taken when Karen was terminated?
5 A. No.
6 Q. You were still her direct supervisor, correct?
7 A. Yes.
8 Q. Do you know who took part in the disciplinary action?
9 A. Only from what I was told by Chief -- Chuck Hurley.
10 Q. And what were you told?
11 A. I was told that there was disciplinary action, I guess
12 i.e. firing of Karen DePaepe, and participating was Mike
13 Schmuhl. He was just -- Chief Hurley really didn't have
14 any say-so about it is what he told me. And Rich Hill.
15 Q. And you say that Chief Hurley just basically told you he
16 really didn't have any say-so on it?
17 A. Right.
18 Q. Were you aware that Chief Hurley signed the termination
19 notice?
20 A. No.
21 Q. Were you consulted in any way prior to that termination
22 notice being served on Karen as to what disciplinary
23 action was appropriate?
24 A. No, not at all.
25 Q. And yet you were still her supervisor, direct supervisor,

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1 correct?
2 A. Yes, sir.
3 Q. Do you know who was consulted -- other than the
4 individuals that you just talked about, were you aware of
5 anyone else that was consulted?
6 MR. SULLIVAN: Objection, lack of foundation. Go
7 ahead. And vague as to "consulted." You may answer.
8 A. I have no idea who was consulted as to her firing.
9 Q. Did you have any other discussions with Chief Hurley about
10 Karen's termination?
11 A. I believe it was the morning of the day that she was
12 terminated was that Chief Hurley had said -- had told me
13 that she was needed at the mayor's office, or 14th floor,
14 I'm not sure which office it was going to take place, and
15 that they were requesting that she go up there for a
16 meeting, and that he was going to be also part of the
17 meeting, and at that time she was going to be terminated.
18 Q. And when did you have that conversation?
19 A. I want to say it was the morning of the day that she was
20 terminated. That was the first time I heard about it.
21 Q. That was the first time you heard about it?
22 A. Yes.
23 Q. Did he tell you why she was going to be terminated?
24 A. No.
25 Q. Was that the only conversation you had with Chuck Hurley

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1 regarding her termination?
2 A. As of right now, it's the only one I believe I had. There
3 may have been one afterwards, but it was definitely that
4 morning. And I believe he told me just vaguely, just in
5 passing after the fact that she was officially terminated.
6 Q. That would have been the second time you would have talked
7 about it?
8 A. Yes.
9 Q. Was there anything else said about it, between the two of
10 you?
11 A. Only thing else that we had talked about was I guess I was
12 surprised and trying to ask if there was any other avenue
13 for not having her terminated.
14 Q. And you were talking with the chief?
15 A. Chief Hurley.
16 Q. And what was his response?
17 A. He pretty much said the decision had been made and it was
18 out of our hands.
19 Q. Did he indicate to you who the decision was made by?
20 A. No.
21 Q. Did he indicate to you what his understanding was of why
22 the decision was made?
23 A. We didn't get into that.
24 Q. Did you have any other conversations with him?
25 A. Only other conversation was after the fact that she was

Page 122

1 officially terminated.
2 Q. And have you already told me about that conversation?
3 A. Yes.
4 Q. Is there anything more about that conversation that you
5 haven't told me?
6 A. No, sir. Well, I mentioned as to who was in the room.
7 Q. Who was in the room?
8 A. I think I mentioned it was Mike Schmuhl, the chief, and
9 Rich Hill. Whether -- that's only from what I got from
10 the chief.
11 Q. Right. From Chuck Hurley?
12 A. Correct.
13 Q. Did you speak with anyone else at the department about
14 referencing Karen's termination?
15 A. No. It was in confidence between the chief and I.
16 Q. Well, was there any talk in the department when Karen was
17 fired about her firing, that you were aware of?
18 MR. SULLIVAN: Objection, vague, lack of
19 foundation, lack of timeframe. Go ahead.
20 A. I'm sorry. I'm sure there was lots of talk, especially
21 among her people, the people that worked hand in hand with
22 her, with her deputy director who was a good friend and
23 loyal to her. And we had to move on and continue as we
24 needed to do 24/7 and keep moving in the right direction,
25 I guess.

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1 Q. Did you talk to Diane Scott about Karen's firing?
2 A. Yes.
3 Q. And when did you have that conversation?
4 A. It was either the same day or the next day. I'm really
5 not sure when. But our main goal was to continue on and
6 make sure that there was a smooth transition, not only of
7 certain pass codes, passwords to systems, to e-mails, data
8 files, office keys, etc.
9 Q. Well, what do you remember having talked about with Diana
10 Scott in particular regarding Karen's termination?
11 A. I really don't remember much about the actual termination.
12 It was mainly the fact that we had to continue on and had
13 to make sure all bases and continuity and change of
14 administration of the communication center was going to be
15 in a smooth and orderly fashion. That was about it.
16 Q. Okay. And when did line 245-6031, when was that removed
17 from the recording system?
18 A. I have no idea.
19 Q. Did you remain division chief of services during the time
20 that Karen was terminated?
21 A. Yes.
22 Q. Has 245-6031 been removed from the recording system?
23 A. I sure hope so.
24 MR. DUERRING: I don't have any other questions.
25 MR. SULLIVAN: No questions.

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1 THE REPORTER: Signature?
2 MR. SULLIVAN: Yes.
3 (The deposition concluded and witness excused at
4 1:34 p.m.)
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CERTIFICATE

I, Angela J. Galipeau, a Notary Public, in and for the County of Porter and State Of Indiana, do hereby certify:

That GARY HORVATH appeared before me on Tuesday, December 17, 2013, and was duly sworn or affirmed to testify the truth, the whole truth, and nothing but the truth to questions propounded at the taking of the foregoing deposition in a cause now pending and undetermined in said court;

That I further certify that I then and there reported stenographically the proceedings at the said time and place; that the proceedings were then transcribed from my original shorthand notes; and that the foregoing typewritten transcript is a true and correct record thereof;

That I am not a relative or employee or attorney or counsel, nor a relative or employee of such attorney or counsel for any of the parties hereto, nor am I interested directly or indirectly in the outcome of this action;

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 18th day of December, 2013.

Angela J. Galipeau, RPR, CSR
Notary Public, State of Indiana
Residence: Porter County
Commission Expires: 4-23-17

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

KAREN DEPAEPE,

Plaintiff,

vs) Case No. 3:13-CV-383

CITY OF SOUTH BEND and PETE
BUTTIGIEG, individually and in his
official capacity as Mayor of the
CITY OF SOUTH BEND,

Defendants.

GARY HORVATH

I hereby acknowledge that I have read the foregoing transcription regarding the case of Karen DePaepe vs City of South Bend, et al., taken Tuesday, December 17, 2013, and that the same is a true and correct transcription of the answers given by me to the questions propounded, except for the additions or changes, if any, as noted on the attached errata sheet.

GARY HORVATH

SUBSCRIBED AND SWORN to
before me this day
of A.D.

Notary Public, State of Indiana
County of Residence:
My Commission Expires: